

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

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Revisor's Note

Section 10(f), V.T.I.C. Article 21.54, refers to V.T.I.C. Article 1.14-2. The revised law substitutes a reference to Chapter 981 of this code for the reason stated in the revisor's note to Section 2201.206.

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14

CHAPTER 2202. JOINT UNDERWRITING

15

SUBCHAPTER A. GENERAL PROVISIONS

16

Revised Law

17

Sec. 2202.001. DEFINITIONS. In this chapter:

18

(1) "Insurer" means any insurance company,

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corporation, reciprocal or interinsurance exchange, mutual

20

association, county mutual insurance company, Lloyd's plan, or

21

other insurer authorized to engage in business in this state. The

22

term does not include an insurer that writes only life, health, or

23

accident insurance, variable life insurance, or variable annuity

24

contracts.

25

(2) "Joint underwriting association" means a

26

voluntary unincorporated association of insurers authorized to

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engage in business in this state that has been authorized by the

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association's member insurers to act on behalf of the member

29

insurers in joint underwriting or in issuing syndicate insurance

30

policies on a several, but not joint, basis. (V.T.I.C. Art.

31

21.49-3b, Secs. 2(3), (4).)

32

Source Law

33

[Sec. 2. In this article:]

34

(3) "Insurer" means any insurance company,

35

corporation, inter-insurance exchange, mutual or

1 reciprocal association, county mutual insurance
2 company, Lloyd's, or other insurance carrier licensed
3 to do business in this state. The term does not
4 include a carrier that writes only life, health, or
5 accident insurance, variable life insurance, or
6 variable annuity contracts.

7 (4) "Joint underwriting association"
8 means a voluntary unincorporated association of
9 admitted insurers authorized to do business in this
10 state that has been authorized by its member insurers
11 to act on behalf of those insurers in joint
12 underwriting or in the issuance of syndicate policies
13 of insurance on a several but not joint basis.

14 Revisor's Note

15 (1) Section 2(3), V.T.I.C. Article 21.49-3b,
16 refers to a "Lloyd's" and a "reciprocal association."
17 For consistency of terminology within this code, the
18 revised law substitutes references to a "Lloyd's plan"
19 and a "reciprocal or interinsurance exchange" for the
20 references to "Lloyd's" and "reciprocal association,"
21 respectively.

22 (2) Section 2(3), V.T.I.C. Article 21.49-3b,
23 refers to an insurer "licensed" to do business in this
24 state. Throughout this chapter, the revised law
25 substitutes "authorized" for "licensed" because
26 "certificate of authority" is the term used throughout
27 this code in relation to an entity's authority to
28 engage in business.

29 (3) Section 2(4), V.T.I.C. Article 21.49-3b,
30 provides that a joint underwriting association is a
31 voluntary unincorporated association of "admitted"
32 insurers authorized to engage in business in this
33 state. Throughout this chapter, the revised law omits
34 the reference to "admitted" as unnecessary because an
35 insurer that is authorized to engage in business in
36 this state is necessarily an "admitted" insurer.

37 (4) Section 2, V.T.I.C. Article 21.49-3b,
38 defines "Board" and "Commissioner." The revised law
39 omits those definitions as unnecessary. Chapter 685,
40 Acts of the 73rd Legislature, Regular Session, 1993,

abolished the State Board of Insurance and transferred that board's functions to the commissioner of insurance and the Texas Department of Insurance. Throughout this chapter, references to the board have been changed appropriately. Definitions of "commissioner" and "department" are unnecessary because Section 31.001 of this code contains definitions of those terms that apply to this title. The omitted law reads:

Sec. 2. In this article:

- (1) "Board" means the State Board of Insurance.
- (2) "Commissioner" means the commissioner of insurance.

Revised Law

Sec. 2202.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to the transaction of life, health, or accident insurance business. (V.T.I.C. Art. 21.49-3b, Sec. 15.)

Source Law

Sec. 15. This article does not apply to the transaction of life, health, or accident insurance business.

Revised Law

Sec. 2202.003. DEPOSIT OF FEES. Fees collected under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 21.49-3b, Sec. 16 (part).)

Source Law

Sec. 16. Fees collected under this article shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund. . . .

Revisor's Note

Section 16, V.T.I.C. Article 21.49-3b, requires fees to be deposited "in the state treasury to the credit of the State Board of Insurance operating fund." Under Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State

Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 2202.004. CERTAIN APPROPRIATIONS FROM GENERAL REVENUE FUND PROHIBITED. The legislature may not appropriate money from the general revenue fund to administer this chapter, other than fees collected under this chapter and deposited to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 21.49-3b, Sec. 16 (part).)

Source Law

Sec. 16. . . . Funds may not be appropriated from the general revenue fund to administer this article.

Revisor's Note

(1) Section 16, V.T.I.C. Article 21.49-3b, refers to the appropriation of "funds." The revised law substitutes the term "money" for "funds" because, in context, the terms are synonymous and "money" is more commonly used.

(2) Section 16, V.T.I.C. Article 21.49-3b, prohibits the appropriation of funds from the general revenue fund to administer Article 21.49-3b. However, for the reason stated in the revisor's note to Section 2202.003, the State Board of Insurance operating fund, once a separate fund in the treasury, is now an account in the general revenue fund. Under Section 16, amounts in the operating fund could be appropriated to administer the article. For the purpose of preserving the intent of Section 16, the revised law is drafted to permit the appropriation of fees collected under this chapter and deposited to the credit of the Texas Department of Insurance operating account.

1 Revisor's Note
2 (End of Subchapter)

3 Section 1, V.T.I.C. Article 21.49-3b, provides a
4 short title by which the article may be cited. The
5 revised law omits this provision because Article
6 21.49-3b is not a statute of wide application that is
7 frequently referred to by its short title, and the
8 heading to this chapter of the revised law is
9 sufficient to describe the revised law to the reader.
10 The omitted law reads:

11 Art. 21.49-3b
12 Sec. 1. This article may be cited as
13 the Joint Underwriting Association
14 Licensing Act.

15 [Sections 2202.005-2202.050 reserved for expansion]

16 SUBCHAPTER B. AUTHORITY TO ACT AS JOINT UNDERWRITING ASSOCIATION

17 Revised Law

18 Sec. 2202.051. CERTIFICATE OF AUTHORITY REQUIRED. An
19 association of insurers may not act as a joint underwriting
20 association in this state on behalf of the association's member
21 insurers unless the association holds a certificate of authority
22 issued under this chapter. (V.T.I.C. Art. 21.49-3b, Sec. 3.)

23 Source Law

24 Sec. 3. An association of insurers may not act as
25 a joint underwriting association in this state on
26 behalf of its member insurers unless it holds a license
27 issued under this article.

28 Revisor's Note

29 Section 3, Article 21.49-3b, states that an
30 insurer may not act as a joint underwriting
31 association unless the insurer holds a "license."
32 Throughout this chapter, the revised law substitutes
33 "certificate of authority" for "license" because
34 "certificate of authority" is the term used throughout
35 this code in relation to an entity's authority to
36 engage in business.

37 Revised Law

38 Sec. 2202.052. APPLICATION FOR CERTIFICATE OF

1 AUTHORITY. (a) An association of insurers that applies for a
2 certificate of authority under this chapter must file a written
3 application on forms prescribed by the commissioner.

4 (b) The application must include:

5 (1) the names and addresses of the association's
6 officers and directors;

7 (2) a copy of the association's constitution, articles
8 of agreement or association, bylaws, rules, powers of attorney, or
9 other agreements governing the association's activities;

10 (3) a list of the insurers authorized to engage in
11 business in this state who are association members and the
12 addresses of those insurers' principal administrative offices;

13 (4) the name and address of a resident of this state
14 who will act as the association's agent for receipt of notices or
15 orders of the commissioner and for service of process; and

16 (5) other information as required by the commissioner.

17 (c) At least one officer of the association must swear to
18 the application. (V.T.I.C. Art. 21.49-3b, Sec. 4.)

19 Source Law

20 Sec. 4. (a) Each association of insurers that
21 applies for a license under this article must file a
22 written application on forms prescribed by the
23 commissioner.

24 (b) The application shall include:

25 (1) the names and addresses of the
26 officers and directors of the association;

27 (2) a copy of the association's
28 constitution, articles of agreement or association,
29 bylaws, rules, powers of attorney, or other agreements
30 governing its activities;

31 (3) a list of the insurers licensed to do
32 business in this state who are members of the
33 association and the addresses of their principal
34 administrative offices;

35 (4) the name and address of a resident of
36 this state who shall act as the association's agent for
37 receipt of notices or orders of the board and for
38 service of process; and

39 (5) other information as required by the
40 commissioner.

41 (c) The application shall be sworn to by at
42 least one officer of the association.

43 Revised Law

44 Sec. 2202.053. ISSUANCE OF CERTIFICATE OF AUTHORITY. The
45 commissioner shall issue a certificate of authority to a joint

1 underwriting association that complies with the requirements of
2 this chapter. (V.T.I.C. Art. 21.49-3b, Sec. 5.)

3 Source Law

4 Sec. 5. The commissioner shall issue a license
5 to a voluntary unincorporated association of insurers
6 that complies with the requirements of this article.

7 Revised Law

8 Sec. 2202.054. TERM OF CERTIFICATE OF AUTHORITY. Unless
9 renewed, a certificate of authority issued under this chapter
10 expires on the third anniversary of the date the certificate is
11 issued. (V.T.I.C. Art. 21.49-3b, Sec. 11 (part).)

12 Source Law

13 Sec. 11. Each license issued under this article
14 expires three years from the date of issuance unless
15 renewed. . . .

16 Revised Law

17 Sec. 2202.055. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) An
18 applicant for the renewal of a certificate of authority must file an
19 application for renewal with the commissioner and pay the renewal
20 fee on or before the date the certificate expires.

21 (b) The applicant shall file a list of the names and
22 addresses of the association's officers and directors and a list of
23 the association's member insurers with the application for renewal.
24 At least one officer of the association must swear to the list.

25 (c) A renewed certificate of authority expires on the third
26 anniversary of the renewal date. (V.T.I.C. Art. 21.49-3b, Secs.
27 8(a), 11 (part).)

28 Source Law

29 Sec. 8. (a) Each association licensed under
30 this article shall file a list of the names and
31 addresses of its officers and directors and a list of
32 its members with the application for a renewal license
33 filed under Section 11 of this article. The list shall
34 be sworn to by at least one officer of the association.

35 Sec. 11. . . . To renew the license, an
36 application for renewal must be filed with the
37 commissioner by the renewal applicant and the renewal
38 fee paid on or before the expiration of the license. A
39 renewed license continues in effect for three years
40 after the date of renewal unless otherwise revoked or
41 suspended.

1 Revisor's Note

2 Section 11, V.T.I.C. Article 21.49-3b, states
3 that a renewed license continues in effect "unless
4 otherwise revoked or suspended." The revised law
5 omits the quoted phrase as unnecessary because it is
6 duplicative of Section 13, V.T.I.C. Article 21.49-3b,
7 revised in pertinent part in this chapter as Sections
8 2202.201 and 2202.202, which provides that a license
9 may be suspended or revoked.

10 Revised Law

11 Sec. 2202.056. FEE FOR CERTIFICATE OF AUTHORITY. (a) An
12 applicant for the issuance or renewal of a certificate of authority
13 must pay a nonrefundable fee in an amount set by the commissioner
14 when the applicant files the application.

15 (b) The fee may not exceed \$200. (V.T.I.C. Art. 21.49-3b,
16 Sec. 12.)

17 Source Law

18 Sec. 12. An applicant for an original or renewal
19 joint underwriting association license shall pay a
20 nonrefundable fee when the application is filed in an
21 amount set by the board, but not to exceed \$200.

22 Revised Law

23 Sec. 2202.057. RECIPROCITY. The commissioner may waive
24 any requirement for a certificate of authority for an applicant who
25 holds a certificate of authority from another state if the other
26 state has requirements for a certificate of authority that are
27 substantially equivalent to the requirements of this state.
28 (V.T.I.C. Art. 21.49-3b, Sec. 6.)

29 Source Law

30 Sec. 6. The board may waive any of the license
31 requirements for an applicant with a valid license
32 from another state that has license requirements
33 substantially equivalent to those of this state.

34 Revisor's Note

35 Section 6, V.T.I.C. Article 21.49-3b, refers to
36 an applicant with a "valid license" from another
37 state. The revised law substitutes "certificate of

1 authority" for "license" for the reason stated in the
2 revisor's note to Section 2202.051 and omits "valid" as
3 unnecessary because the word does not add to the clear
4 meaning of the law. For example, a document purporting
5 to be a certificate of authority is no longer a
6 certificate of authority if its is expired and is not a
7 certificate of authority if it is a forgery.

8 [Sections 2202.058-2202.100 reserved for expansion]

9 SUBCHAPTER C. POWERS AND DUTIES OF JOINT UNDERWRITING

10 ASSOCIATION

11 Revised Law

12 Sec. 2202.101. AUTHORITY TO ACT. A joint underwriting
13 association may:

14 (1) act only on behalf of association members who are
15 authorized to engage in business in this state; and

16 (2) engage in only those activities the association is
17 authorized to perform by the association members. (V.T.I.C.
18 Art. 21.49-3b, Sec. 7.)

19 Source Law

20 Sec. 7. (a) A joint underwriting association
21 may act only on behalf of members of the association
22 who are admitted and licensed to do business in this
23 state.

24 (b) A joint underwriting association may engage
25 in only those activities it is authorized to perform by
26 the members of the association.

27 Revised Law

28 Sec. 2202.102. NOTIFICATION OF CERTAIN INFORMATION
29 REQUIRED. An association holding a certificate of authority under
30 this chapter shall notify the commissioner of a change in the
31 information required to be filed under Section 2202.052 not later
32 than the 30th day after the date the change takes effect. (V.T.I.C.
33 Art. 21.49-3b, Sec. 8(b).)

34 Source Law

35 (b) Each association licensed under this
36 article shall notify the commissioner of any change in
37 any of the information required to be filed under
38 Section 4 of this article not later than the 30th day
39 after the date on which the change takes effect.

Revised Law

Sec. 2202.103. MAINTENANCE OF INFORMATION. (a) A joint underwriting association shall maintain at the association's principal administrative office adequate records of all transactions.

(b) The association shall maintain the records in accordance with prudent recognized industry standards of recordkeeping.

(c) The commissioner or the commissioner's designated representative is entitled to access to records maintained under Subsection (a) for examination, audit, and inspection.

(d) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use information otherwise confidential in proceedings instituted against an association. (V.T.I.C. Art. 21.49-3b, Sec. 9.)

Source Law

Sec. 9. (a) Each joint underwriting association shall maintain at its principal administrative office adequate records of all transactions.

(b) The association shall maintain the records in accordance with prudent recognized industry standards of recordkeeping.

(c) The commissioner or the commissioner's designated representative is entitled to access to those records for examination, audit, and inspection.

(d) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use information otherwise confidential in proceedings instituted against an association.

[Sections 2202.104-2202.150 reserved for expansion]

SUBCHAPTER D. AUDIT AND EXAMINATION REQUIREMENTS

Revised Law

Sec. 2202.151. ANNUAL AUDIT. An independent certified public accountant shall annually audit the books of accounts of a joint underwriting association as provided by Subchapter A, Chapter 401. A copy of the audit must be filed with the commissioner. (V.T.I.C. Art. 21.49-3b, Sec. 10(a).)

Source Law

Sec. 10. (a) The books of accounts of joint underwriting associations shall be audited annually as provided by Article 1.15A of this code by an independent certified public accountant, and a copy of that audit shall be filed with the commissioner.

Revised Law

Sec. 2202.152. EXAMINATION BY COMMISSIONER. (a) The commissioner may require an examination of a joint underwriting association as often as the commissioner considers necessary. The association shall pay the reasonable costs of the examination on presentation to the association of a detailed account of the costs of the examination.

(b) The association's officers and employees may be examined under oath at any time and shall exhibit on request all books, records, accounts, documents, or agreements governing the association's operations.

(c) Instead of the examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state under the laws of that state. (V.T.I.C. Art. 21.49-3b, Sec. 10(b).)

Source Law

(b) The board may require an examination of each joint underwriting association as often as it considers necessary. The reasonable costs of the examination shall be paid by the association on presentation to the association of a detailed account of those costs. The officers and employees of the association may be examined at any time, under oath, and shall exhibit on request all books, records, accounts, documents, or agreements governing the operations of the association. Instead of the examination, the board may accept the report of an examination made by the insurance supervisory official of another state under the laws of that state.

[Sections 2202.153-2202.200 reserved for expansion]

SUBCHAPTER E. DISCIPLINARY ACTIONS AND
PROCEDURES; ENFORCEMENT

Revised Law

Sec. 2202.201. GROUNDS FOR DENIAL OF CERTIFICATE OF AUTHORITY OR FOR DISCIPLINARY ACTION. The commissioner may deny an application for a certificate of authority or discipline a

1 certificate holder under this subchapter if the commissioner finds
2 that the applicant or certificate holder, or an officer or director
3 of an applicant or certificate holder:

4 (1) wilfully violated or participated in the violation
5 of this chapter or any other insurance law of this state;

6 (2) intentionally made a material misstatement in the
7 original or renewal application;

8 (3) obtained or attempted to obtain the certificate by
9 fraud or misrepresentation;

10 (4) misappropriated, converted to a personal or other
11 inappropriate use, or illegally withheld money required to be held
12 in a fiduciary capacity;

13 (5) has been convicted of a felony or convicted of a
14 misdemeanor of which criminal fraud is an essential element; or

15 (6) is incompetent or untrustworthy. (V.T.I.C. Art.
16 21.49-3b, Sec. 13 (part).)

17 Source Law

18 Sec. 13. A license may be denied, suspended, or
19 revoked or the renewal of the license refused if, . . .
20 the commissioner finds that the license applicant or
21 license holder, or an officer or director of a license
22 applicant or license holder, has:

23 (1) wilfully violated or participated in
24 the violation of this article or any other insurance
25 law of this state;

26 (2) intentionally made a material
27 misstatement in the original or renewal license
28 application;

29 (3) obtained or attempted to obtain the
30 license by fraud or misrepresentation;

31 (4) misappropriated or converted to a
32 personal or other inappropriate use or illegally
33 withheld money required to be held in a fiduciary
34 capacity;

35 (5) been convicted of a felony, or of any
36 misdemeanor of which criminal fraud is an essential
37 element; or

38 (6) been found by the commissioner to be
39 incompetent or untrustworthy.

40 Revised Law

41 Sec. 2202.202. DENIAL OF CERTIFICATE OF AUTHORITY OR
42 DISCIPLINARY ACTION. If the commissioner finds that a ground for a
43 denial of a certificate of authority or disciplinary action under
44 Section 2202.201 exists, the commissioner may:

(1) deny the application for the certificate; or
(2) suspend, revoke, or refuse to renew the certificate of authority. (V.T.I.C. Art. 21.49-3b, Sec. 13 (part).)

Source Law

Sec. 13. A license may be denied, suspended, or revoked or the renewal of the license refused if, . . . the commissioner finds that [the license applicant or license holder, or an officer or director of a license applicant or license holder, has:

(1) wilfully violated or participated in the violation of this article or any other insurance law of this state;

(2) intentionally made a material misstatement in the original or renewal license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated or converted to a personal or other inappropriate use or illegally withheld money required to be held in a fiduciary capacity;

(5) been convicted of a felony, or of any misdemeanor of which criminal fraud is an essential element; or

(6) been found by the commissioner to be incompetent or untrustworthy.]

Revised Law

Sec. 2202.203. NOTICE AND HEARING. (a) Before the commissioner may deny an application for a certificate of authority or discipline a certificate holder under this subchapter, the commissioner must:

(1) give notice by certified mail to the applicant or certificate holder; and

(2) set a date on which the applicant or certificate holder may appear to be heard and produce evidence.

(b) A hearing under Subsection (a) may not be set for a date that is earlier than the 20th day or later than the 30th day after the date the notice is mailed.

(c) The notice must contain specific reasons for the hearing and a list of the matters to be considered at the hearing.

(d) At the hearing, the commissioner or a department employee designated to conduct the hearing may:

(1) administer oaths, require the appearance of

witnesses, and examine any person under oath; and

(2) on the commissioner's initiative or on the request of the applicant or certificate holder, require the production of books, records, or papers relevant to the inquiry. (V.T.I.C. Art. 21.49-3b, Secs. 13 (part), 14(a).)

Source Law

Sec. 13. [A license may be denied, suspended, or revoked or the renewal of the license refused if,] after notice and hearing as provided by Section 14 of this article, [the commissioner finds]

Sec. 14. (a) Before a license may be denied, suspended, or revoked or the renewal of the license refused, the commissioner shall give notice by certified mail to the applicant or license holder and shall set a date on which the applicant or license holder may appear to be heard and to produce evidence. The hearing date must be not less than 20 days or more than 30 days after the date on which the notice is mailed. The notice must contain specific reasons for the hearing and a list of the matters to be considered at the hearing. At the hearing, the commissioner or any regular employee of the board designated to conduct the hearing may administer oaths, require the appearance of witnesses, examine any person under oath, and require the production of books, records, or papers relevant to the inquiry on the initiative of the commissioner or on the request of the applicant or license holder.

Revised Law

Sec. 2202.204. ISSUANCE OF ORDER. On the termination of the hearing, the findings shall be written and filed with the department. The commissioner shall issue an order showing the findings approved by the commissioner and shall send the order by certified mail to the applicant or certificate holder. (V.T.I.C. Art. 21.49-3b, Sec. 14(b).)

Source Law

(b) On the termination of the hearing the findings shall be written and, on approval by the commissioner, shall be filed with the board. The commissioner shall issue an order showing the findings, and shall send the order by certified mail to the applicant or license holder. The applicant or license holder may appeal the order of the commissioner to the board.

Revisor's Note

Section 14(b), V.T.I.C. Article 21.49-3b, states: "The applicant or license holder may appeal the order of the commissioner to the board." The

1 revised law omits the statement as unnecessary.
2 Chapter 685, Acts of the 73rd Legislature, Regular
3 Session, 1993, abolished the State Board of Insurance
4 and transferred the board's functions to the
5 commissioner of insurance or department of insurance.
6 The process for an appeal to the board therefore no
7 longer exists.

8 Revised Law

9 Sec. 2202.205. APPEAL. If the commissioner denies an
10 application for a certificate of authority as provided by this
11 chapter or suspends, revokes, or refuses to renew a certificate at a
12 hearing as provided by this chapter, the applicant or certificate
13 holder may appeal the commissioner's action as provided by
14 Subchapter D, Chapter 36. (V.T.I.C. Art. 21.49-3b, Sec. 14(c).)

15 Source Law

16 (c) If the commissioner refuses an application
17 for a license as provided by this article, or suspends,
18 revokes, or refuses to renew a license at a hearing as
19 provided by this article, the applicant or license
20 holder may appeal from that action as provided by
21 Article 1.04 of this code.

22 Revised Law

23 Sec. 2202.206. APPLICATION AFTER DENIAL, REFUSAL, OR
24 REVOCATION. (a) Except as provided by Subsection (b), an applicant
25 for a certificate of authority or certificate holder whose
26 certificate of authority has been denied, refused, or revoked under
27 this chapter may not file another application for a certificate of
28 authority before the first anniversary of the effective date of the
29 denial, refusal, or revocation.

30 (b) If an applicant or certificate holder seeks judicial
31 review of a denial, refusal, or revocation, the applicant or
32 certificate holder may not file another application for a
33 certificate of authority before the first anniversary of the date
34 of a final court order or decree affirming the denial, refusal, or
35 revocation.

36 (c) If an applicant files an application after the date

1 specified by this section, the commissioner may refuse the
2 application unless the applicant shows good cause why the denial of
3 the previous application or the refusal to renew or the revocation
4 of the original certificate of authority should not be a bar to the
5 issuance of a new certificate. (V.T.I.C. Art. 21.49-3b, Sec.
6 14(d).)

7 Source Law

8 (d) An applicant or license holder whose license
9 has been denied, refused, or revoked under this
10 article may not file another license application
11 before the first anniversary of the effective date of
12 the denial, refusal, or revocation or, if judicial
13 review of the denial, refusal, or revocation is
14 sought, before the first anniversary of the date of the
15 final court order or decree affirming that action. If
16 an application is filed after that first anniversary,
17 the commissioner may refuse the application unless the
18 applicant shows good cause why the denial, refusal, or
19 revocation of the original license should not be a bar
20 to the issuance of a new license.

21 Revised Law

22 Sec. 2202.207. ADDITIONAL SANCTIONS; INJUNCTION. (a) An
23 association that violates this chapter or a rule or order adopted
24 under this chapter is subject to sanctions under Chapter 82.

25 (b) The attorney general, a district or county attorney, or
26 the commissioner may institute proceedings for an injunction or any
27 other proceeding necessary to enforce this chapter. (V.T.I.C. Art.
28 21.49-3b, Sec. 17.)

29 Source Law

30 Sec. 17. (a) An association that violates this
31 article or any rule or order adopted under this article
32 is subject to sanctions under Section 7, Article 1.10
33 of this code.

34 (b) The attorney general, a district or county
35 attorney, the commissioner, or the board may institute
36 an injunction proceeding or any other proceeding
37 necessary to enforce this article.

38 Revisor's Note
39 (End of Chapter)

40 The revised law omits Section 18, V.T.I.C.
41 Article 21.49-3b, because Section 18 is an effective
42 date provision that has been executed. The omitted law
43 reads:

44 Sec. 18. A joint underwriting

1 association is not required to hold a
2 license issued under Article 21.49-3b,
3 Insurance Code, before January 1, 1992.

4 CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING
5 ASSOCIATION

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33 CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING
34 ASSOCIATION

1 SUBCHAPTER A. GENERAL PROVISIONS

2 Revised Law

3 Sec. 2203.001. SHORT TITLE. This chapter may be cited as
4 the Texas Medical Liability Insurance Underwriting Association
5 Act. (V.T.I.C. Art. 21.49-3, Sec. 1.)

6 Source Law

7 Art. 21.49-3

8 Sec. 1. This Act shall be known as the "Texas
9 Medical Liability Insurance Underwriting Association
10 Act."

11 Revised Law

12 Sec. 2203.002. DEFINITIONS. In this chapter:

13 (1) "Assisted living facility" means a for-profit or
14 not-for-profit assisted living facility.

15 (2) "Association" means the joint underwriting
16 association established under this chapter.

17 (3) "Board of directors" means the board of directors
18 of the association.

19 (4) "Health care provider" means:

20 (A) a person, partnership, professional
21 association, corporation, facility, or institution licensed or
22 chartered by this state to provide health care, as defined in
23 Section 74.001(a)(10), Civil Practice and Remedies Code, as:

24 (i) a registered nurse, dentist,
25 podiatrist, pharmacist, chiropractor, or optometrist;

26 (ii) a hospital;

27 (iii) a nursing home;

28 (iv) a radiation therapy center that is
29 independent of any other medical treatment facility, is licensed by
30 the Department of State Health Services in that agency's capacity
31 as the Texas Radiation Control Agency under Chapter 401, Health and
32 Safety Code, and is in compliance with the regulations adopted
33 under that chapter;

34 (v) a blood bank that is a nonprofit
35 corporation chartered to operate a blood bank and is accredited by

1 the American Association of Blood Banks;

2 (vi) a nonprofit corporation that is
3 organized for the delivery of health care to the public and is
4 certified under Chapter 162, Occupations Code;

5 (vii) a health center, as defined by 42
6 U.S.C. Section 254b, as amended; or

7 (viii) an assisted living facility; or

8 (B) an officer, employee, or agent of an entity
9 listed in Paragraph (A) acting in the course and scope of that
10 person's office, employment, or agency.

11 (5) "Medical liability insurance" means primary and
12 excess liability insurance coverage against:

13 (A) the legal liability of the insured; and

14 (B) loss, damage, or expense incident to a claim
15 arising out of the death or injury of a person as the result of
16 negligence in rendering or failing to render professional service
17 by a health care provider or physician who is in a category eligible
18 for coverage by the association.

19 (6) "Net direct premiums" means gross direct premiums
20 written on automobile liability and other liability insurance
21 written under this code, less:

22 (A) policyholder dividends;

23 (B) return premiums for the unused or unabsorbed
24 portion of premium deposits; and

25 (C) return premiums on canceled contracts
26 written on the liability risks.

27 (7) "Nursing home" means a for-profit or
28 not-for-profit nursing home.

29 (8) "Physician" means a person licensed to practice
30 medicine in this state. (V.T.I.C. Art. 21.49-3, Secs. 2(1), (2),
31 (3), (5), (6); Art. 21.49-3d, Sec. 2(1); New.)

32 Source Law

33 [Art. 21.49-3]

34 Sec. 2. (1) "Medical liability insurance"
35 means primary and excess insurance coverage against

1 the legal liability of the insured and against loss,
2 damage, or expense incident to a claim arising out of
3 the death or injury of any person as the result of
4 negligence in rendering or the failure to render
5 professional service by a health care provider or
6 physician who is in one of the categories eligible for
7 coverage by the association.

8 (2) "Association" means the joint
9 underwriting association established pursuant to the
10 provisions of this article.

11 (3) "Net direct premiums" means gross
12 direct premiums written on automobile liability and
13 liability other than auto insurance written pursuant
14 to the provisions of the Insurance Code, less
15 policyholder dividends, return premiums for the unused
16 or unabsorbed portion of premium deposits and less
17 return premiums upon cancelled contracts written on
18 such liability risks.

19 (5) "Physician" means a person licensed to
20 practice medicine in this state.

21 (6) "Health care provider" means:

22 (A) any person, partnership,
23 professional association, corporation, facility, or
24 institution duly licensed or chartered by the State of
25 Texas to provide health care as defined in Section
26 1.03(a)(2), Medical Liability and Insurance
27 Improvement Act of Texas (Article 4590i, Vernon's
28 Texas Civil Statutes), as:

29 (i) a registered nurse,
30 hospital, dentist, podiatrist, pharmacist,
31 chiropractor, or optometrist;

32 (ii) a for-profit or
33 not-for-profit nursing home;

34 (iii) a radiation therapy
35 center that is independent of any other medical
36 treatment facility and which is licensed by the Texas
37 Department of Health in that agency's capacity as the
38 Texas Radiation Control Agency pursuant to the
39 provisions of Chapter 401, Health and Safety Code, and
40 which is in compliance with the regulations
41 promulgated under that chapter;

42 (iv) a blood bank that is a
43 nonprofit corporation chartered to operate a blood
44 bank and which is accredited by the American
45 Association of Blood Banks;

46 (v) a nonprofit corporation
47 which is organized for the delivery of health care to
48 the public and which is certified under Chapter 162,
49 Occupations Code;

50 (vi) a health center as defined
51 by 42 U.S.C. Section 254b, as amended; or

52 (vii) a for-profit or
53 not-for-profit assisted living facility; or

54 (B) an officer, employee, or agent of
55 an entity listed in Paragraph (A) of this subdivision
56 acting in the course and scope of that person's
57 employment.

58 [Art. 21.49-3d]

59 Sec. 2. In this article:

60 (1) "Association" means the joint
61 underwriting association established under Article
62 21.49-3 of this code.

63 Revisor's Note

64 (1) Section 2(4), V.T.I.C. Article 21.49-3,

1 defines "board" as the State Board of Insurance.
2 Chapter 685, Acts of the 73rd Legislature, Regular
3 Session, 1993, abolished the State Board of Insurance
4 and transferred its functions to the commissioner of
5 insurance and the Texas Department of Insurance.
6 Throughout this chapter, references to the board have
7 been changed appropriately. For this reason, the
8 revised law omits the definition of "board." The
9 omitted law reads:

10 (4) "Board" means the State
11 Board of Insurance of the State of Texas.

12 (2) Section 2(6), V.T.I.C. Article 21.49-3,
13 refers to an institution that is "duly" licensed. The
14 revised law omits the reference to "duly" as
15 unnecessary because the word does not add to the clear
16 meaning of the law.

17 (3) Section 2(6), V.T.I.C. Article 21.49-3,
18 refers to "health care as defined in Section
19 1.03(a)(2), Medical Liability and Insurance
20 Improvement Act of Texas (Article 4590i, Vernon's
21 Texas Civil Statutes)." Section 10.09, Chapter 204,
22 Acts of the 78th Legislature, Regular Session, 2003,
23 repealed Article 4590i, and Section 10.01 of that act
24 transferred the substance of that article's definition
25 of "health care" to Section 74.001(a)(10), Civil
26 Practice and Remedies Code. The revised law is drafted
27 accordingly.

28 (4) Section 2(6), V.T.I.C. Article 21.49-3,
29 refers to a medical treatment facility licensed by the
30 "Texas Department of Health" in the department's
31 capacity as the Texas Radiation Control Agency. The
32 Texas Department of Health was abolished under the
33 provisions of Section 1.26, Chapter 198, Acts of the
34 78th Legislature, Regular Session, 2003, and that act

1 transferred the department's duties and functions with
2 respect to licensing to the Department of State Health
3 Services, which was created under Section 1.19 of that
4 act. In addition, any license that was issued by the
5 former Texas Department of Health was continued in
6 effect as a license of the Department of State Health
7 Services. Accordingly, the revised law substitutes
8 "Department of State Health Services" for "Texas
9 Department of Health."

10 (5) The revised law adds definitions of
11 "assisted living facility," "board of directors," and
12 "nursing home" for drafting convenience and to
13 eliminate frequent, unnecessary repetition of the
14 substance of the definitions.

15 Revised Law

16 Sec. 2203.003. IMMUNITY. Liability does not exist on the
17 part of, and a cause of action does not arise against, the
18 association, an association agent or employee, an insurer, an agent
19 licensed under this code, the commissioner or department, or an
20 authorized representative of the commissioner or department for a
21 statement made in good faith by any of them:

22 (1) in a report or communication concerning risks
23 insured or to be insured through the association; or

24 (2) at an administrative hearing conducted in
25 connection with the report or communication. (V.T.I.C. Art.
26 21.49-3, Sec. 8.)

27 Source Law

28 Sec. 8. There shall be no liability on the part
29 of, and no cause of action of any nature shall arise
30 against the association, its agents or employees, an
31 insurer, any licensed agent, or the board or its
32 authorized representatives, for any statements made in
33 good faith by them in any reports or communications,
34 concerning risks insured or to be insured by the
35 association, or at any administrative hearings
36 conducted in connection therewith.

37 Revised Law

38 Sec. 2203.004. APPLICABILITY OF OTHER LAW. The association

1 is subject to Sections 401.051, 401.052, 401.054-401.062, 401.151,
2 401.152, 401.155, and 401.156 and Subchapter A, Chapter 86.
3 (V.T.I.C. Art. 21.49-3, Sec. 10.)

4 Source Law

5 Sec. 10. The association is subject to Articles
6 1.15 and 1.16 of this code.

7 Revisor's Note

8 Section 10, V.T.I.C. Article 21.49-3, references
9 V.T.I.C. Articles 1.15 and 1.16. Those articles are
10 revised in various provisions of this code, including
11 Sections 401.051 and 401.155. Section 401.051 also
12 revises portions of V.T.I.C. Article 1.19. The
13 revised law substitutes references to Section 401.155
14 and to Section 401.051 in its entirety because the
15 provisions of Article 1.19 revised in Section 401.051
16 are substantively identical to provisions derived from
17 Article 1.15 that are also revised in that section.

18 Revised Law

19 Sec. 2203.005. RELATIONSHIP TO SURPLUS LINES INSURANCE.
20 The association is not an authorized insurer for purposes of
21 Chapter 981 with respect to medical liability insurance for
22 physicians. (V.T.I.C. Art. 21.49-3, Sec. 3(a) (part).)

23 Source Law

24 (a) . . . The association shall not be a
25 licensed insurer within the meaning of Article 1.14-2,
26 Insurance Code, relating to medical liability
27 insurance for physicians as defined in this article.

28 Revisor's Note

29 Section 3(a), V.T.I.C. Article 21.49-3, refers to
30 a "licensed insurer." The revised law substitutes
31 "authorized" for "licensed" because "certificate of
32 authority" is the term used throughout this code in
33 relation to an entity's authority to engage in
34 business.

35 [Sections 2203.006-2203.050 reserved for expansion]

1 SUBCHAPTER B. ASSOCIATION ADMINISTRATION AND OPERATION

2 Revised Law

3 Sec. 2203.051. PURPOSE OF ASSOCIATION. The association
4 provides medical liability insurance on a self-supporting basis.
5 (V.T.I.C. Art. 21.49-3, Sec. 3(a) (part).)

6 Source Law

7 (a) . . . The purpose of the association shall
8 be to provide medical liability insurance on a
9 self-supporting basis. . . .

10 Revised Law

11 Sec. 2203.052. BOARD OF DIRECTORS. (a) The association is
12 governed by a board of directors composed of the following nine
13 members:

14 (1) five representatives of insurers that are required
15 to be association members, elected by association members;

16 (2) one physician, appointed by the Texas Medical
17 Association or a successor to that association;

18 (3) one representative of hospitals, appointed by the
19 Texas Hospital Association or a successor to that association; and

20 (4) two public members, appointed by the commissioner.

21 (b) The board members serve one-year terms beginning on
22 October 1 of each year. (V.T.I.C. Art. 21.49-3, Sec. 6.)

23 Source Law

24 Sec. 6. (a) The association shall be governed
25 by a board of nine directors, to be selected annually
26 as follows:

27 (1) five representatives of insurers
28 required to be members of the association who are
29 elected by members of the association;

30 (2) one physician who is appointed by the
31 Texas Medical Association or its successor;

32 (3) one representative of hospitals
33 appointed by the Texas Hospital Association or its
34 successor; and

35 (4) two members of the public to be
36 appointed by the State Board of Insurance.

37 (b) Members of the association's board of
38 directors take office on October 1 each year.

39 Revised Law

40 Sec. 2203.053. PLAN OF OPERATION. (a) The association
41 operates under a plan of operation adopted by the commissioner.

42 (b) The plan of operation must:

1 (1) provide for economic, fair, and nondiscriminatory
2 administration;

3 (2) provide for the prompt and efficient provision of
4 medical liability insurance; and

5 (3) contain other provisions, including provisions
6 relating to:

7 (A) the establishment of necessary facilities;

8 (B) the association's management;

9 (C) the assessment of members and policyholders
10 to defray losses and expenses;

11 (D) the administration of the policyholder's
12 stabilization reserve funds;

13 (E) commission arrangements;

14 (F) reasonable and objective underwriting
15 standards;

16 (G) the acceptance, assumption, and cession of
17 reinsurance;

18 (H) the appointment of servicing insurers; and

19 (I) procedures for determining amounts of
20 insurance to be provided by the association.

21 (c) The plan of operation must direct that any revenue
22 exceeding expenditures that remains in the association's funds at
23 the close of the association's fiscal year, after the association
24 reimburses members' contributions in accordance with Section
25 2203.255(a), be added to the association's reserves. (V.T.I.C.
26 Art. 21.49-3, Secs. 3(c)(1) (part), (2) (part), (3).)

27 Source Law

28 (c)(1) The board shall . . . promulgate a plan
29 of operation

30 (2) The plan of operation shall provide
31 for economic, fair, and nondiscriminatory
32 administration and for the prompt and efficient
33 provision of medical liability insurance, and shall
34 contain other provisions including, but not limited
35 to, . . . establishment of necessary facilities,
36 management of the association, assessment of members
37 and assessment of policyholders to defray losses and
38 expenses, administration of the policyholder's
39 stabilization reserve fund, commission arrangements,
40 reasonable and objective underwriting standards,

1 acceptance, assumption, and cession of reinsurance,
2 appointment of servicing carriers, and procedures for
3 determining amounts of insurance to be provided by the
4 association.

5 (3) The plan of operation shall provide
6 that any balance remaining in the funds of the
7 association at the close of its fiscal year, meaning
8 its then excess of revenue over expenditures after
9 reimbursement of members' contributions in accordance
10 with Section 4(b)(5) of this article by the
11 association shall be added to the reserves of the
12 association.

13 Revisor's Note

14 (1) Sections 3(c)(1) and (2), V.T.I.C. Article
15 21.49-3, require the State Board of Insurance to adopt
16 a plan of operation after consulting with certain
17 persons and entities and require that the plan provide
18 for the assessment of association members to meet the
19 initial expenses necessary for the joint underwriting
20 association to begin operating. The revised law omits
21 the language as executed. The omitted law reads:

22 (c)(1) [The board shall], after
23 consultation with the joint underwriting
24 association, representatives of the public,
25 the Texas Medical Association, the Texas
26 Podiatry Association, the Texas Hospital
27 Association, and other affected individuals
28 and organizations, [promulgate a plan of
29 operation] consistent with the provisions
30 of this article, to become effective and
31 operative no later than 90 days after the
32 effective date of this Act.

33 (2) [The plan of operation
34 . . . shall contain other provisions
35 including,] . . . preliminary assessment
36 of all members for initial expenses
37 necessary to commence operations,

38 (2) Section 3(c)(2), V.T.I.C. Article 21.49-3,
39 states that the plan of operation must contain
40 provisions, "including, but not limited to," certain
41 specified provisions. The revised law omits "but not
42 limited to" as unnecessary because Section
43 311.005(13), Government Code (Code Construction Act),
44 applicable to the revised law, and Section
45 312.011(19), Government Code, provide that "includes"
46 and "including" are terms of enlargement and not of
47 limitation and do not create a presumption that

1 components not expressed are excluded.

2 (3) Section 3(c)(2), V.T.I.C. Article 21.49-3,
3 refers to the "policyholder's stabilization reserve
4 fund." That language originally referred to the
5 policyholder's stabilization reserve fund under
6 Section 4A, Article 21.49-3, revised in relevant part
7 in this chapter as Section 2203.301. However, after
8 the enactment of Section 3(c)(2), another
9 stabilization reserve fund was established under
10 Section 4B, V.T.I.C. Article 21.49-3, revised in
11 relevant part in this chapter as Section 2203.303.
12 Section 4B established a "stabilization reserve fund,"
13 but did not expressly designate that fund to be a
14 "policyholder's stabilization reserve fund." The
15 revised law substitutes a reference to the
16 "policyholder's stabilization reserve funds" for the
17 reference to the "policyholder's stabilization reserve
18 fund" in Section 3(c)(2) because it is clear that the
19 reference is intended to refer to both funds created
20 under Sections 4A and 4B. Similar changes are made
21 throughout this chapter in this context. In addition,
22 the revised law throughout this chapter substitutes
23 references to the "policyholder's stabilization
24 reserve fund" for references to the "stabilization
25 reserve fund" established by Section 4B and similar
26 references to that fund for consistency of
27 terminology.

28 Revised Law

29 Sec. 2203.054. AMENDMENTS TO PLAN OF OPERATION. Amendments
30 to the plan of operation:

- 31 (1) shall be made at the commissioner's direction; or
32 (2) may be made by the board of directors, subject to
33 the commissioner's approval. (V.T.I.C. Art. 21.49-3, Sec.
34 3(c)(4).)

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(a) The association is composed of each insurer, including a Lloyd's plan and a reciprocal or interinsurance exchange, authorized to write and writing liability insurance, including automobile liability insurance, on a direct basis in this state, other than:

(2) a county mutual insurance company authorized under Chapter 912.

(b) An insurer that is a member of the association must remain a member as a condition of the insurer's authority to engage in the business of the insurance described by Subsection (a).

(c) Each association member participates in the writings, expenses, and losses of the association in the proportion that the net direct premiums of the member, excluding the portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all association members.

(d) The association shall annually determine a member's participation in the association on the basis of the net direct premiums written by the member during the preceding calendar year, as reported in the annual statements and other reports the member files as required by the department. (V.T.I.C. Art. 21.49-3, Secs. 3(a) (part), 5(b) (part).)

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Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code, specifically

1 including and applicable to Lloyds and reciprocal or
2 interinsurance exchanges, but excluding farm mutual
3 insurance companies as authorized by Chapter 16 of
4 this code, and county mutual insurance companies as
5 authorized by Chapter 17 of this code. Every such
6 insurer shall be a member of the association and shall
7 remain a member as a condition of its authority to
8 continue to transact such kind of insurance in this
9 state. . . .

10 [Sec. 5]

11 (b) All insurers which are members of the
12 association shall participate in its writings,
13 expenses, and losses in the proportion that the net
14 direct premiums, as defined herein, of each such
15 member, excluding that portion of premiums
16 attributable to the operation of the association,
17 written during the preceding calendar year bears to
18 the aggregate net direct premiums written in this
19 state by all members of the association. Each
20 insurer's participation in the association shall be
21 determined annually on the basis of such net direct
22 premiums written during the preceding calendar year,
23 as reported in the annual statements and other reports
24 filed by the insurer that may be required by the
25 board. . . .

26 Revisor's Note

27 (1) Section 3(a), V.T.I.C. Article 21.49-3,
28 states that the joint underwriting association "is
29 hereby created." The revised law omits "is hereby
30 created" as executed.

31 (2) Section 3(a), V.T.I.C. Article 21.49-3,
32 refers to an insurer authorized to write and writing
33 insurance "as provided in the Insurance Code." The
34 revised law omits the quoted language as unnecessary
35 because the only authorization to write insurance in
36 this state is provided by this code.

37 (3) Section 3(a), V.T.I.C. Article 21.49-3,
38 refers to the joint underwriting association
39 consisting of all insurers authorized to write and
40 writing certain insurance in this state "on or after
41 January 1, 1975." The revised law omits the quoted
42 language as executed.

43 (4) Section 3(a), V.T.I.C. Article 21.49-3,
44 refers to "Lloyds." For consistency of terminology
45 within this code, the revised law substitutes "Lloyd's
46 plan" for "Lloyds."

1 Revised Law

2 Sec. 2203.056. ANNUAL STATEMENT; ADDITIONAL INFORMATION.

3 (a) Not later than March 1 of each year, the association shall file
4 with the department a statement that contains information regarding
5 the association's transactions, condition, operations, and affairs
6 during the preceding calendar year.

7 (b) The statement must:

8 (1) contain the matters and information required by
9 the department; and

10 (2) be in the form approved by the department.

11 (c) The department at any time may require the association
12 to provide additional information regarding the association's
13 transactions or condition, or any related matter considered to be:

14 (1) material; and

15 (2) of assistance in evaluating the scope, operation,
16 and experience of the association. (V.T.I.C. Art. 21.49-3, Sec.
17 9.)

18 Source Law

19 Sec. 9. The association shall file in the office
20 of the board, annually on or before the first day of
21 March, a statement which shall contain information
22 with respect to its transactions, condition,
23 operations, and affairs during the preceding calendar
24 year. Such statement shall contain such matters and
25 information as are prescribed and shall be in such form
26 as is approved by the board. The board may, at any
27 time, require the association to furnish additional
28 information with respect to its transactions,
29 condition, or any matter connected therewith
30 considered to be material and of assistance in
31 evaluating the scope, operation, and experience of the
32 association.

33 [Sections 2203.057-2203.100 reserved for expansion]

34 SUBCHAPTER C. ELIGIBILITY FOR COVERAGE

35 Revised Law

36 Sec. 2203.101. GENERAL ELIGIBILITY. (a) The commissioner
37 shall by order establish the categories of physicians and health
38 care providers that are eligible to obtain insurance coverage from
39 the association. The commissioner may revise the order to:

40 (1) include as eligible for that coverage other

1 categories of physicians and health care providers; or

2 (2) exclude from eligibility for that coverage
3 particular categories of physicians and health care providers.

4 (b) If a category of physicians or health care providers is
5 excluded from eligibility to obtain insurance coverage from the
6 association, the commissioner may determine, after notice of at
7 least 10 days and a hearing, that medical liability insurance is not
8 otherwise available. On that determination, the previously
9 excluded category is eligible to obtain insurance coverage from the
10 association. (V.T.I.C. Art. 21.49-3, Secs. 3A(a), (b).)

11 Source Law

12 Sec. 3A. (a) The commissioner shall establish
13 by order the categories of physicians and health care
14 providers who are eligible to obtain coverage from the
15 association and may, from time to time, revise its
16 order to include or exclude from eligibility
17 particular categories of such physicians and health
18 care providers.

19 (b) If a category of physicians or health care
20 providers has been excluded from eligibility to obtain
21 coverage from the association, the commissioner may
22 determine, after notice of at least 10 days and a
23 hearing, that medical liability insurance is not
24 available. On that determination, the category of
25 physicians or health care providers is eligible to
26 obtain insurance coverage from the association.

27 Revisor's Note

28 Section 3A, V.T.I.C. Article 21.49-3, states that
29 the commissioner of insurance may revise the order
30 that contains categories of eligible physicians and
31 health care providers "from time to time." The revised
32 law omits the quoted language as unnecessary because
33 the power to take an action includes the power to act
34 "from time to time."

35 Revised Law

36 Sec. 2203.102. INSURER OF LAST RESORT FOR CERTAIN NURSING
37 HOMES AND ASSISTED LIVING FACILITIES. (a) A nursing home or
38 assisted living facility not otherwise eligible for insurance
39 coverage from the association under Section 2203.101 is eligible
40 for that coverage if the home or facility demonstrates, in
41 accordance with the requirements of the association, that the home

1 or facility:

2 (1) made a verifiable effort to obtain insurance
3 coverage from authorized insurers and eligible surplus lines
4 insurers; and

5 (2) was unable to obtain substantially equivalent
6 insurance coverage and rates.

7 (b) In consultation with the Department of Aging and
8 Disability Services, the commissioner by rule shall adopt minimum
9 rating standards for for-profit nursing homes and for-profit
10 assisted living facilities that must be met before a for-profit
11 nursing home or for-profit assisted living facility may obtain
12 insurance coverage through the association. The standards must
13 promote the highest practical level of care for residents of the
14 nursing homes and assisted living facilities. (V.T.I.C. Art.
15 21.49-3, Secs. 3A(c), (d).)

16 Source Law

17 (c) A for-profit or not-for-profit nursing home
18 or assisted living facility not otherwise eligible
19 under this section for coverage from the association
20 is eligible for coverage if the nursing home or
21 assisted living facility demonstrates, in accordance
22 with the requirements of the association, that the
23 nursing home or assisted living facility made a
24 verifiable effort to obtain coverage from authorized
25 insurers and eligible surplus lines insurers and was
26 unable to obtain substantially equivalent coverage and
27 rates.

28 (d) In consultation with the Texas Department of
29 Human Services, the commissioner shall, by rule, adopt
30 minimum rating standards for for-profit nursing homes
31 and for-profit assisted living facilities that must be
32 met before a for-profit nursing home or for-profit
33 assisted living facility may obtain coverage through
34 the association. The standards must promote the
35 highest practical level of care for residents of those
36 nursing homes and assisted living facilities.

37 Revisor's Note

38 Section 3A(d), V.T.I.C. Article 21.49-3, states
39 that the commissioner of insurance shall consult with
40 the "Texas Department of Human Services" to adopt
41 rating standards for for-profit nursing homes and
42 assisted living facilities. The Texas Department of
43 Human Services was abolished under the provisions of

1 Section 1.26, Chapter 198, Acts of the 78th
2 Legislature, Regular Session, 2003, and that act
3 transferred the department's duties and functions to
4 various other state agencies. That act also created
5 the Department of Aging and Disability Services, to
6 which the duties and functions related to the
7 provision of services by for-profit nursing homes and
8 assisted living facilities were transferred.
9 Accordingly, the revised law substitutes "Department
10 of Aging and Disability Services" for "Texas
11 Department of Human Services."

12 Revised Law

13 Sec. 2203.103. ELIGIBILITY OF OTHER HEALTH CARE
14 PRACTITIONERS AND FACILITIES. (a) In this section:

15 (1) "Health care" includes a medical or health care
16 service, including an examination, treatment, medical diagnosis,
17 or evaluation, and care provided in an inpatient, outpatient, or
18 residential setting.

19 (2) "Health care facility" means a facility providing
20 health care, other than a facility described by Section
21 2203.002(4).

22 (3) "Health care practitioner" means an individual,
23 other than an individual described by Section 2203.002(4), who:

24 (A) is licensed to provide health care; or

25 (B) is not licensed to provide health care but
26 provides health care under the direction or supervision of a
27 licensed individual.

28 (b) After notice and opportunity for hearing, the
29 commissioner may:

30 (1) determine that appropriate liability insurance
31 coverage written by insurers authorized to engage in business in
32 this state is not reasonably available to a type of health care
33 practitioner or health care facility; and

34 (2) by order designate that type of health care

1 practitioner or health care facility to be included as a health care
2 provider eligible to receive coverage under this chapter.

3 (c) A health care practitioner or facility designated under
4 Subsection (b) is entitled to receive insurance coverage under this
5 chapter in accordance with Chapter 1901 in the same manner as other
6 health care providers described by Section 2203.002 and Section
7 1901.001.

8 (d) The commissioner's order may indicate whether a health
9 care practitioner or facility designated under Subsection (b) is
10 included under the policyholder's stabilization reserve fund
11 established under Section 2203.301 or 2203.303 or whether a
12 separate policyholder's stabilization reserve fund is created. A
13 separate policyholder's stabilization reserve fund established
14 under this subsection operates in the same manner as a
15 policyholder's stabilization reserve fund created under Section
16 2203.303. (V.T.I.C. Art. 21.49-3, Sec. 3B.)

17 Source Law

18 Sec. 3B. (a) In this section:

19 (1) "Health care" includes any medical or
20 health care service, including an examination,
21 treatment, medical diagnosis, or evaluation, and care
22 provided in an inpatient, outpatient, or residential
23 setting.

24 (2) "Health care facility" means a
25 facility providing health care, other than a facility
26 described by Section 2(6) of this article.

27 (3) "Health care practitioner" means an
28 individual, other than an individual described by
29 Section 2(6) of this article, who:

30 (A) is licensed to provide health
31 care; or

32 (B) is not licensed to provide health
33 care but provides health care under the direction or
34 supervision of a licensed individual.

35 (b) After notice and opportunity for hearing,
36 the commissioner may:

37 (1) determine that appropriate liability
38 insurance coverage written by insurers authorized to
39 engage in business in this state is not reasonably
40 available to a type of health care practitioner or
41 health care facility; and

42 (2) by order designate that type of health
43 care practitioner or health care facility to be
44 included as a health care provider eligible to receive
45 coverage under this article.

46 (c) A health care practitioner or facility
47 designated under Subsection (b) of this section is
48 entitled to receive coverage provided under this
49 article in accordance with Article 5.15-1 of this code
50 in the same manner as other health care providers

1 described by Section 2 of this article and Section 2,
2 Article 5.15-1, of this code.

3 (d) The commissioner's order may indicate
4 whether a health care practitioner or facility
5 designated under Subsection (b) of this section is
6 included under the policyholder's stabilization
7 reserve fund established under Section 4A or 4B of this
8 article or whether a separate policyholder's
9 stabilization reserve fund is created. A separate
10 policyholder's stabilization reserve fund established
11 under this subsection operates in the same manner as a
12 stabilization reserve fund created under Section 4B of
13 this article.

14 Revisor's Note

15 Section 3B(c), V.T.I.C. Article 21.49-3, refers
16 to insurance coverage provided under V.T.I.C. Article
17 5.15-1. The relevant provisions of that article are
18 revised in Chapter 1901 of this code. Although Chapter
19 1901 contains provisions that are derived from
20 V.T.I.C. Article 5.15-4, the revised law substitutes a
21 reference to Chapter 1901 in its entirety for the
22 reference to Article 5.15-1. Article 5.15-1 applies
23 to professional liability insurance for physicians and
24 health care providers, including the setting of rates
25 for that kind of insurance. Section 2(2), Article
26 5.15-1, defines "health care provider" to include a
27 nursing home. Article 5.15-4 in part governs the
28 consideration of best practices for nursing homes in
29 setting rates for professional liability insurance for
30 nursing homes. Because both Articles 5.15-1 and
31 5.15-4 apply to the setting of rates for professional
32 liability insurance for nursing homes and the articles
33 must, therefore, be read in conjunction with respect
34 to that kind of insurance, it is appropriate to
35 substitute a reference to Chapter 1901 for the
36 references to Article 5.15-1.

37 Revised Law

38 Sec. 2203.104. APPLICATION FOR COVERAGE. (a) A health
39 care provider or physician included in a category eligible for
40 insurance coverage by the association is entitled to apply to the

1 association for the coverage. An agent authorized under Chapter
2 4051 may apply on behalf of an applicant.

3 (b) The association shall issue a medical liability
4 insurance policy to an applicant:

5 (1) if the association determines that:

6 (A) the applicant meets the underwriting
7 standards of the association prescribed by the plan of operation;
8 and

9 (B) there is no unpaid and uncontested premium,
10 policyholder's stabilization reserve fund charge, or assessment
11 due from the applicant for prior insurance, as shown by the
12 insured's failure to pay or to object in writing to the charges on
13 or before the 30th day after the date of the billing; and

14 (2) on receipt of the premium and the policyholder's
15 stabilization reserve fund charge, or the portion of the premium
16 and charge prescribed by the plan of operation. (V.T.I.C. Art.
17 21.49-3, Secs. 4(a)(1), (2) (part).)

18 Source Law

19 Sec. 4. (a)(1) Any health care provider or
20 physician included in one of the categories of health
21 care providers eligible for coverage by the
22 association shall, on or after the effective date of
23 the plan of operation, be entitled to apply to the
24 association for such coverage. Such application may
25 be made on behalf of an applicant by an agent
26 authorized pursuant to Article 21.14 of this code.

27 (2) If the association determines that the
28 applicant meets the underwriting standards of the
29 association as prescribed in the plan of operation and
30 there is no unpaid, uncontested premium, policyholder
31 stabilization reserve fund charge, or assessment due
32 from the applicant for prior insurance (as shown by the
33 insured having failed to pay or make written objection
34 to such charges within 30 days after billing) then the
35 association, upon receipt of the premium and the
36 policyholder stabilization reserve fund charge, or
37 such portion thereof as is prescribed in the plan of
38 operation, shall cause to be issued a policy of medical
39 liability insurance

40 Revisor's Note

41 Section 4(a)(1), V.T.I.C. Article 21.49-3,
42 entitles certain health care providers and physicians
43 to apply to the joint underwriting association for
44 insurance coverage "on or after the effective date of

1 the plan of operation." The revised law omits the
2 quoted language as executed.

3 [Sections 2203.105-2203.150 reserved for expansion]

4 SUBCHAPTER D. ASSOCIATION COVERAGE

5 Revised Law

6 Sec. 2203.151. POWERS RELATING TO MEDICAL LIABILITY
7 INSURANCE COVERAGE. (a) Under this chapter and the plan of
8 operation, the association, on behalf of the association members,
9 may:

10 (1) issue, or cause to be issued, medical liability
11 insurance policies to applicants, including primary, excess, and
12 incidental coverages, subject to the limits specified in the plan
13 of operation and Section 2203.152;

14 (2) underwrite medical liability insurance and adjust
15 and pay losses related to that insurance, or appoint servicing
16 insurers to perform those functions;

17 (3) either or both accept and refuse the assumption of
18 reinsurance from association members; and

19 (4) cede and purchase reinsurance.

20 (b) The association may provide general liability insurance
21 coverage to be issued in connection with medical liability
22 insurance issued by the association. (V.T.I.C. Art. 21.49-3, Secs.
23 3(b) (part), (d).)

24 Source Law

25 (b) The association shall, pursuant to the
26 provisions of this article and the plan of operation
27 with respect to medical liability insurance, have the
28 power on behalf of its members:

29 (1) to issue, or to cause to be issued,
30 policies of insurance to applicants, including
31 primary, excess, and incidental coverages and subject
32 to limits as specified in the plan of operation; . . .;

33 (2) to underwrite such insurance and to
34 adjust and pay losses with respect thereto, or to
35 appoint service companies to perform those functions;

36 (3) to either or both accept and refuse the
37 assumption of reinsurance from its members; and

38 (4) to cede and purchase reinsurance.

39 (d) The association may provide general
40 liability insurance coverage to be issued in
41 connection with medical liability insurance issued by
42 the association.

Revised Law

Sec. 2203.152. POLICY LIMITS. The association may not issue one or more policies insuring an individual or organization for an amount exceeding \$1 million for each occurrence and \$3 million in the aggregate for a year. (V.T.I.C. Art. 21.49-3, Sec. 3(b) (part).)

Source Law

(b) . . .
 (1) . . . provided that no individual or organization may be insured by policies issued by the association for an amount exceeding a total of \$1 million per occurrence and \$3 million aggregate per annum;
 . . .

Revised Law

Sec. 2203.153. FOLLOWING FORM EXCESS LIABILITY COVERAGE.
Excess liability insurance coverage written for a physician or health care provider by the association under this chapter must be written as following form excess liability insurance to the physician's or provider's primary insurance coverage. (V.T.I.C. Art. 21.49-3, Sec. 4(c).)

Source Law

(c) Excess insurance coverage written for a health care provider or a physician by the association under this article shall be written on a following form basis to the primary insurance coverage of that health care provider.

Revised Law

Sec. 2203.154. PUNITIVE DAMAGES EXCLUDED. The association may not issue or renew a medical liability insurance policy for a physician or health care provider under this chapter that includes coverage for punitive damages assessed against the physician or health care provider. (V.T.I.C. Art. 21.49-3, Sec. 4(d).)

Source Law

(d) A policy of medical liability insurance issued to or renewed for a physician or health care provider by the association under this article may not include coverage for punitive damages assessed against the physician or health care provider.

Revised Law

Sec. 2203.155. INSTALLMENT PLAN. The association may offer

1 an installment payment plan for insurance coverage obtained through
2 the association. (V.T.I.C. Art. 21.49-3, Sec. 4(e).)

3 Source Law

4 (e) The association may offer an installment
5 payment plan for coverage obtained through the
6 association.

7 Revised Law

8 Sec. 2203.156. TERM OF POLICY; NOTICE OF CERTAIN CHANGES.

9 (a) A policy issued by the association must be for a term of one
10 year or less, as determined by the association.

11 (b) Section 1901.253 does not apply to a medical liability
12 insurance policy issued by the association for a term of less than
13 one year.

14 (c) The association shall ensure that appropriate written
15 notice is provided to the insured for a policy described by
16 Subsection (b) if the association intends to:

17 (1) increase the premiums on the policy; or

18 (2) cancel or not renew the policy for a reason other
19 than for nonpayment of premiums or because the insured is no longer
20 licensed. (V.T.I.C. Art. 21.49-3, Secs. 4(a)(2) (part), (f).)

21 Source Law

22 [(a)]

23 (2) . . . [then the association] . . .
24 shall cause to be issued a policy of medical liability
25 insurance for a term of one year or less, as determined
26 by the association.

27 (f) Section 7, Article 5.15-1 of this code, does
28 not apply to a medical liability insurance policy
29 issued by the association for a term of less than one
30 year. With respect to a policy subject to this
31 subsection, the association shall ensure that
32 appropriate written notice is provided to an insured
33 if premiums are increased or the policy is to be
34 canceled or is not to be renewed other than for
35 nonpayment of premiums or because the insured is no
36 longer licensed.

37 [Sections 2203.157-2203.200 reserved for expansion]

38 SUBCHAPTER E. RATES AND POLICY FORMS

39 Revised Law

40 Sec. 2203.201. APPLICABILITY OF OTHER LAW TO RATES AND
41 POLICY FORMS. (a) Except as provided by Subsection (b) and subject

1 to Section 2203.203, the following laws govern the rates, rating
2 plans, rating rules, rating classifications, territories, and
3 policy forms applicable to the insurance written by the association
4 and related statistics:

- 5 (1) Section 36.002(1);
- 6 (2) Subchapter B, Chapter 5;
- 7 (3) Subchapters A and C, Chapter 1806;
- 8 (4) Subchapter A, Chapter 2301;
- 9 (5) Chapter 251, as that chapter relates to casualty
10 insurance and fidelity, guaranty, and surety bond insurance;
- 11 (6) Chapter 253;
- 12 (7) Chapters 2251 and 2252; and
- 13 (8) Subtitle B.

14 (b) If a provision of a law described by Subsections
15 (a)(1)-(8) conflicts with a provision of this chapter, this chapter
16 prevails. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(1) (part).)

17 Source Law

18 (b)(1) Subject to Subdivision (6) of this
19 subsection, the rates, rating plans, rating rules,
20 rating classification, territories, and policy forms
21 applicable to the insurance written by the association
22 and statistics relating thereto shall be subject to
23 Subchapter B of Chapter 5 of the Insurance Code, as
24 amended, . . . provided, that if any article of the
25 above subchapter is in conflict with any provision of
26 this Act, this Act shall prevail. . . .

27 Revisor's Note

28 Section 4(b)(1), V.T.I.C. Article 21.49-3,
29 refers to Subchapter B, V.T.I.C. Chapter 5, "as
30 amended." The revised law omits "as amended" because
31 Section 311.027, Government Code (Code Construction
32 Act), applicable to the revised law, provides that
33 unless expressly provided otherwise, a reference to a
34 statute applies to all reenactments, revisions, or
35 amendments of the statute.

36 Revised Law

37 Sec. 2203.202. RATE STANDARDS. (a) In determining rates,
38 rating plans, rating rules, rating classifications, territories,

1 and policy forms, the association shall consider:

2 (1) the past and prospective loss and expense
3 experience for medical professional liability insurance, inside
4 and outside this state, of all of the association members;

5 (2) trends in the frequency and severity of losses;

6 (3) the association's investment income; and

7 (4) other information the commissioner may require.

8 (b) Rates, rating plans, and rating rules must be based on:

9 (1) the association's loss and expense experience; and

10 (2) other information based on that experience the
11 department considers appropriate.

12 (c) The resultant premium rates must be:

13 (1) actuarially sound; and

14 (2) computed to be self-supporting. (V.T.I.C. Art.
15 21.49-3, Secs. 4(b)(1) (part), (4) (part).)

16 Source Law

17 (1) . . . the rates, rating plans, rating
18 rules, rating classification, territories, and policy
19 forms applicable to the insurance written by the
20 association . . . [shall be subject to Subchapter B of
21 Chapter 5] . . . giving due consideration to the past
22 and prospective loss and expense experience for
23 medical professional liability insurance within and
24 without this state of all of the member companies of
25 the association, trends in the frequency and severity
26 of losses, the investment income of the association,
27 and such other information as the commissioner may
28 require;

29 (4) After the initial year of operation,
30 rates, rating plans, and rating rules, and . . .
31 should be based upon the association's loss and expense
32 experience, together with such other information based
33 upon such experience as the department may deem
34 appropriate. The resultant premium rates shall be on
35 an actuarially sound basis and shall be calculated to
36 be self-supporting.

37 Revisor's Note

38 (1) Section 4(b)(1), V.T.I.C. Article 21.49-3,
39 states that for-profit nursing homes and assisted
40 living facilities are subject to the same requirements
41 under V.T.I.C. Article 5.15-1 as not-for-profit
42 nursing homes and assisted living facilities. The
43 revised law omits the statement because Article 5.15-1

1 applies by its own terms to those nursing homes and
2 assisted living facilities. Before 2001, Article
3 5.15-1 applied to not-for-profit nursing homes.
4 Section 2(2), Article 5.15-1, was amended in 2001 by
5 Chapter 1284, Acts of the 77th Legislature, Regular
6 Session, to apply to for-profit and not-for-profit
7 nursing homes. That section was amended again in 2003
8 by Chapter 141, Acts of the 78th Legislature, Regular
9 Session, to apply to for-profit and not-for-profit
10 nursing homes and assisted living facilities. The
11 omitted law reads:

12 (1) . . . For purposes of this
13 article, rates, rating plans, rating rules,
14 rating classifications, territories, and
15 policy forms for for-profit nursing homes
16 and for-profit assisted living facilities
17 are subject to the requirements of Article
18 5.15-1 of this code to the same extent as
19 not-for-profit nursing homes and
20 not-for-profit assisted living facilities.

21 (2) Section 4(b)(4), V.T.I.C. Article 21.49-3,
22 refers to the information on which the joint
23 underwriting association relies in making rates
24 "[a]fter the initial year of operation." V.T.I.C.
25 Article 21.49-3 was enacted by Chapter 331, Acts of the
26 64th Legislature, Regular Session, 1975, and the joint
27 underwriting association was established by that act
28 on the act's effective date of June 3, 1975.
29 Accordingly, the revised law omits the reference as
30 executed.

31 Revised Law

32 Sec. 2203.203. DISCOUNT FOR CERTAIN HEALTH CARE PROVIDERS.

33 (a) The rates applicable to professional liability insurance
34 coverage provided by the association for not-for-profit nursing
35 homes and not-for-profit assisted living facilities must reflect a
36 discount of 30 percent from the rates for the same coverage provided
37 to others in the same category of insureds.

38 (b) The commissioner shall ensure compliance with this

1 section. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(6).)

2 Source Law

3 (6) The rates applicable to professional
4 liability insurance provided by the association that
5 cover nursing homes and assisted living facilities
6 that are not for profit must reflect a discount of 30
7 percent from the rates for the same coverage provided
8 to others in the same category of insureds. The
9 commissioner shall ensure compliance with this
10 subdivision.

11 [Sections 2203.204-2203.250 reserved for expansion]

12 SUBCHAPTER F. FINANCIAL PARTICIPATION BY MEMBERS AND POLICYHOLDERS

13 Revised Law

14 Sec. 2203.251. DEFICIT RECOUPMENT. (a) This section
15 applies to a deficit sustained in a single year by the association
16 with respect to:

17 (1) physicians and health care providers, other than
18 nursing homes and assisted living facilities; or

19 (2) a nursing home or assisted living facility.

20 (b) The deficit must be recouped in accordance with the plan
21 of operation and the rating plan in effect when the deficit is
22 sustained under one or more of the following procedures, in this
23 sequence:

24 (1) a contribution from the policyholder's
25 stabilization reserve fund established under Section 2203.301 or
26 the policyholder's stabilization reserve fund established under
27 Section 2203.303, as appropriate, until the respective fund is
28 exhausted;

29 (2) an assessment on the policyholders in accordance
30 with Section 2203.252; or

31 (3) an assessment on the members in accordance with
32 Sections 2203.055(c) and (d) and 2203.253. (V.T.I.C. Art. 21.49-3,
33 Sec. 4(b)(3) (part).)

34 Source Law

35 (3) Any deficit sustained by the
36 association with respect to physicians and health care
37 providers, other than for-profit and not-for-profit
38 nursing homes and assisted living facilities, or by
39 for-profit and not-for-profit nursing homes and
40 assisted living facilities in any one year shall be

1 recouped, pursuant to the plan of operation and the
2 rating plan then in effect, by one or more of the
3 following procedures in this sequence:

4 First, a contribution from the policyholder's
5 stabilization reserve fund for physicians and health
6 care providers, other than for-profit and
7 not-for-profit nursing homes and assisted living
8 facilities, established under Section 4A of this
9 article or from the stabilization reserve fund for
10 for-profit and not-for-profit nursing homes and
11 assisted living facilities, established under Section
12 4B of this article, as appropriate, until the
13 respective fund is exhausted;

14 Second, an assessment upon the policyholders
15 pursuant to Section 5(a) of this article;

16 Third, an assessment upon the members pursuant to
17 Section 5(b) of this article. . . .

18 Revised Law

19 Sec. 2203.252. ASSESSMENT OF POLICYHOLDERS FOR DEFICIT
20 RECOUPMENT. (a) Each policyholder within the group of physicians
21 and health care providers, other than nursing homes and assisted
22 living facilities, or within the group of nursing homes and
23 assisted living facilities, has contingent liability for a
24 proportionate share of an assessment made under this chapter of
25 policyholders in the applicable group.

26 (b) If a deficit, as computed under the plan of operation,
27 is sustained with respect to a group described by Subsection (a) in
28 a single year, the board of directors shall levy an assessment only
29 on the policyholders in the applicable group who held policies in
30 force at any time during the two most recently completed calendar
31 years:

32 (1) before the date the assessment is levied; and

33 (2) in which the association was issuing policies.

34 (c) The aggregate amount of an assessment under Subsection
35 (b) must be equal to the amount of the deficit not recouped under
36 Section 2203.251(b)(1) from the applicable policyholder's
37 stabilization reserve fund. Subject to Subsection (d), each
38 policyholder in the applicable group shall be assessed for a
39 portion of the deficit that reflects the proportion that the earned
40 premium on the policies of that policyholder bears to the total
41 earned premium for all policies of the association in the
42 applicable group in the two most recently completed calendar years.

1 (d) The maximum aggregate assessment on each policyholder
2 in the applicable group may not exceed the annual premium for the
3 liability insurance policy most recently in effect. (V.T.I.C. Art.
4 21.49-3, Sec. 5(a).)

5 Source Law

6 Sec. 5. (a) Each policyholder within the group
7 of physicians and health care providers, other than
8 for-profit and not-for-profit nursing homes and
9 assisted living facilities, or within the group of
10 for-profit and not-for-profit nursing homes and
11 assisted living facilities shall have contingent
12 liability for a proportionate share of any assessment
13 of policyholders in the applicable group made under
14 the authority of this article. Whenever a deficit, as
15 calculated pursuant to the plan of operation, is
16 sustained with respect to the group of physicians and
17 health care providers, other than for-profit and
18 not-for-profit nursing homes and assisted living
19 facilities, or the group of for-profit and
20 not-for-profit nursing homes and assisted living
21 facilities in any one year, its directors shall levy an
22 assessment only upon those policyholders in the
23 applicable group who held policies in force at any time
24 within the two most recently completed calendar years
25 in which the association was issuing policies
26 preceding the date on which the assessment was levied.
27 The aggregate amount of the assessment shall be equal
28 to that part of the deficit not recouped from the
29 applicable stabilization reserve fund. The maximum
30 aggregate assessment per policyholder in the
31 applicable group shall not exceed the annual premium
32 for the liability policy most recently in effect.
33 Subject to such maximum limitation, each policyholder
34 in the applicable group shall be assessed for that
35 portion of the deficit reflecting the proportion which
36 the earned premium on the policies of such
37 policyholder bears to the total earned premium for all
38 policies of the association in the applicable group in
39 the two most recently completed calendar years.

40 Revisor's Note

41 Section 5(a), V.T.I.C. Article 21.49-3, refers to
42 deficit recoupment from the policyholder's
43 stabilization reserve fund. Section 4(b)(3), V.T.I.C.
44 Article 21.49-3, the relevant part of which is revised
45 in this chapter as Section 2203.251(b)(1), provides
46 for the recoupment of a deficit from the policyholder's
47 stabilization reserve fund. The revised law adds a
48 cross-reference to Section 2203.251(b)(1) for the
49 convenience of the reader.

Revised Law

Sec. 2203.253. LIMITATION ON REIMBURSEMENT BY MEMBER FOR DEFICIT RECOUPMENT. (a) An association member is not obligated in a single year to reimburse the association for the member's proportionate share of the deficits from the association's operations in that year in an amount that exceeds one percent of the member's policyholder surplus. The aggregate amount not reimbursed in accordance with this subsection shall be reallocated among the other association members. The association shall reallocate that amount in accordance with the method of determining a member's participation under Sections 2203.055(c) and (d), after excluding the total net direct premiums of all members not sharing in the excess deficits.

(b) If the deficits from the association's operations allocated to all association members in a calendar year exceed one percent of all members' respective policyholder surplus, the association shall allocate to each member the amount of the deficits in accordance with the method of determining a member's participation under Sections 2203.055(c) and (d). (V.T.I.C. Art. 21.49-3, Sec. 5(b) (part).)

Source Law

(b) . . . No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficits from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficits. In the event that the deficits from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficits shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Revised Law

Sec. 2203.254. CONTRIBUTION BY MEMBERS FOR SOUND FINANCIAL OPERATION. If sufficient funds are not available for the sound financial operation of the association, each association member

1 shall contribute to the financial requirements of the association
2 in accordance with Sections 2203.055(c) and (d), 2203.252, and
3 2203.253, as authorized and considered necessary by the department.

4 A contribution under this section is in addition to:

5 (1) an assessment paid in accordance with the plan of
6 operation under Section 2203.053(b); and

7 (2) a contribution from a policyholder's stabilization
8 reserve fund. (V.T.I.C. Art. 21.49-3, Sec. 4(b)(5) (part).)

9 Source Law

10 (5) In the event that sufficient funds are
11 not available for the sound financial operation of the
12 association, in addition to assessments paid pursuant
13 to the plan of operation in accordance with Section
14 3(c)(2) of this article and contributions from the
15 policyholder's stabilization reserve fund, all members
16 shall, on a basis authorized by the department, as long
17 as the department deems it necessary, contribute to
18 the financial requirements of the association in the
19 manner provided for in Section 5. . . .

20 Revised Law

21 Sec. 2203.255. REIMBURSEMENT OF ASSESSMENT OR
22 CONTRIBUTION; PREMIUM TAX CREDIT. (a) Subject to commissioner
23 approval, the association shall reimburse an assessment or
24 contribution, with interest at a rate approved by the commissioner,
25 to:

26 (1) the association members; or

27 (2) the state, to the extent that the members have
28 recouped their assessments using premium tax credits as provided by
29 Subsection (c).

30 (b) Pending recoupment or reimbursement of an assessment or
31 contribution paid by a member to the association, the unrepaid
32 balance of the assessment or contribution may be reflected in the
33 member's books and records as an admitted asset of the member for
34 all purposes, including exhibition in an annual statement under
35 Section 862.001.

36 (c) To the extent a member has paid one or more assessments
37 and has not received reimbursement from the association in
38 accordance with Subsection (a), a credit against premium taxes

1 under Chapter 221 is allowed at a rate of 20 percent a year for five
2 successive years following the year in which the deficit was
3 sustained. At the member's option, the tax credit may be taken over
4 an additional number of years. (V.T.I.C. Art. 21.49-3, Secs.
5 4(b)(3) (part), (5) (part).)

6 Source Law

7 (3) . . . To the extent a member has paid
8 one or more assessments and has not received
9 reimbursement from the association in accordance with
10 Subdivision (5) of this subsection, a credit against
11 premium taxes under Article 4.10 of this code, as
12 amended, shall be allowed. The tax credit shall be
13 allowed at a rate of 20 percent per year for five
14 successive years following the year in which said
15 deficit was sustained and at the option of the insurer
16 may be taken over an additional number of years.

17 (5) . . . Any assessment or contribution
18 shall be reimbursed to the members, or to the state to
19 the extent that the members have recouped their
20 assessments using premium tax credits as provided
21 under Subsection (b)(3) of this section, with interest
22 at a rate to be approved by the commissioner, subject
23 to the approval of the commissioner. Pending
24 recoupment or reimbursement of assessments or
25 contributions paid to the association by a member, the
26 unrepaid balance of such assessments and contributions
27 may be reflected in the books and records of the
28 insurer as an admitted asset of the insurer for all
29 purposes, including exhibition in annual statements
30 pursuant to Section 862.001 of this code.

31 Revisor's Note

32 Section 4(b)(3), V.T.I.C. Article 21.49-3,
33 refers to "Article 4.10 of this code, as amended." The
34 revised law omits "as amended" for the reason stated in
35 the revisor's note to Section 2203.201.

36 Revised Law

37 Sec. 2203.256. STANDARDS FOR RECOUPMENT PROVISIONS. A
38 provision for recoupment must be based on:

- 39 (1) the association's loss and expense experience; and
40 (2) other information based on that experience the
41 department considers appropriate. (V.T.I.C. Art. 21.49-3, Sec.
42 4(b)(4) (part).)

43 Source Law

44 (4) . . . any provision for recoupment
45 should be based upon the association's loss and expense
46 experience, together with such other information based

1 upon such experience as the department may deem
2 appropriate. . . .

3 [Sections 2203.257-2203.300 reserved for expansion]

4 SUBCHAPTER G. POLICYHOLDER'S STABILIZATION RESERVE FUNDS

5 Revised Law

6 Sec. 2203.301. POLICYHOLDER'S STABILIZATION RESERVE FUND
7 FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) The
8 policyholder's stabilization reserve fund for physicians and
9 health care providers other than nursing homes and assisted living
10 facilities is collected and administered by the association as
11 provided by this section, Section 2203.302, and the plan of
12 operation.

13 (b) The policyholder's stabilization reserve fund shall be:

14 (1) credited with all policyholder's stabilization
15 reserve fund charges collected under Section 2203.302;

16 (2) charged with any deficit sustained by physicians
17 and health care providers, other than nursing homes and assisted
18 living facilities, from the association's operation during the
19 previous year;

20 (3) treated as a liability of the association along
21 with, and in the same manner as, premium and loss reserves; and

22 (4) valued annually by the board of directors as of the
23 close of the preceding year. (V.T.I.C. Art. 21.49-3, Secs. 4A(a)
24 (part), (c), (e).)

25 Source Law

26 Sec. 4A. (a) There is hereby created a
27 policyholder's stabilization reserve fund for
28 physicians and health care providers, other than
29 for-profit and not-for-profit nursing homes and
30 assisted living facilities, which shall be
31 administered as provided herein and in the plan of
32 operation of the association. . . .

33 (c) The stabilization reserve fund shall be
34 collected and administered by the association and
35 shall be treated as a liability of the association
36 along with and in the same manner as premium and loss
37 reserves. The fund shall be valued annually by the
38 board of directors as of the close of the last
39 preceding year.

40 (e) The stabilization reserve fund shall be
41 credited with all stabilization reserve fund charges
42 collected from physicians and health care providers,

1 other than for-profit and not-for-profit nursing homes
2 and assisted living facilities, and shall be charged
3 with any deficit sustained by physicians and health
4 care providers, other than for-profit and
5 not-for-profit nursing homes and assisted living
6 facilities, from the prior year's operation of the
7 association.

8 Revisor's Note

9 (1) Section 4A(a), V.T.I.C. Article 21.49-3,
10 states that "[t]here is hereby created a
11 policyholder's stabilization reserve fund." The
12 revised law omits the language as executed.

13 (2) Section 4A(c), V.T.I.C. Article 21.49-3,
14 refers to the "last preceding year." The revised law
15 omits "last" as unnecessary. "The preceding" means
16 "the last preceding."

17 Revised Law

18 Sec. 2203.302. POLICYHOLDER'S STABILIZATION RESERVE FUND
19 CHARGE FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) Each
20 policyholder other than a nursing home or assisted living facility
21 shall pay annually into the policyholder's stabilization reserve
22 fund under Section 2203.301 a charge that:

23 (1) is in an amount established annually by advisory
24 directors chosen by physicians and health care providers, other
25 than nursing homes and assisted living facilities, eligible for
26 insurance through the association in accordance with the plan of
27 operation;

28 (2) is in proportion to each premium payment due for
29 liability insurance through the association; and

30 (3) is separately stated in the policy.

31 (b) A charge stated in a policy as required by Subsection
32 (a)(3) is not:

33 (1) a part of premiums; or

34 (2) subject to premium taxation or a servicing fee,
35 acquisition cost, or any other similar charge.

36 (c) If the association offers an installment payment plan
37 for coverage obtained through the association, the association may:

1 (1) permit payment of the policyholder's stabilization
2 reserve fund charge under this section on an installment basis; or

3 (2) require the policyholder to pay the charge as an
4 annual lump sum.

5 (d) Collections of the policyholder's stabilization reserve
6 fund charge under this section shall continue until the net balance
7 of the policyholder's stabilization reserve fund under Section
8 2203.301 is not less than the projected sum of premiums for
9 physicians and health care providers, other than nursing homes and
10 assisted living facilities, to be written in the year following the
11 valuation date. (V.T.I.C. Art. 21.49-3, Secs. 4A(b), as amended
12 Acts 78th Leg., R.S., Chs. 56, 141, (d).)

13 Source Law

14 (b) [as amended Acts 78th Leg., R.S., Ch. 56]
15 Each policyholder shall pay annually into the
16 stabilization reserve fund a charge, the amount of
17 which shall be established annually by advisory
18 directors chosen by health care providers, other than
19 for-profit and not-for-profit nursing homes, and
20 physicians eligible for insurance in the association
21 in accordance with the plan of operation. The charge
22 shall be in proportion to each premium payment due for
23 liability insurance through the association. Such
24 charge shall be separately stated in the policy, but
25 shall not constitute a part of premiums or be subject
26 to premium taxation, servicing fees, acquisition
27 costs, or any other such charges. If the association
28 offers an installment payment plan for coverage
29 obtained through the association, the association may
30 permit payment of the stabilization reserve fund
31 charge on an installment basis or may require the
32 policyholder to pay the charge as an annual lump sum.

33 (b) [as amended Acts 78th Leg., R.S., Ch. 141]
34 Each policyholder shall pay annually into the
35 stabilization reserve fund a charge, the amount of
36 which shall be established annually by advisory
37 directors chosen by health care providers, other than
38 for-profit and not-for-profit nursing homes and
39 assisted living facilities, and physicians eligible
40 for insurance in the association in accordance with
41 the plan of operation. The charge shall be in
42 proportion to each premium payment due for liability
43 insurance through the association. Such charge shall
44 be separately stated in the policy, but shall not
45 constitute a part of premiums or be subject to premium
46 taxation, servicing fees, acquisition costs, or any
47 other such charges.

48 (d) Collections of the stabilization reserve
49 fund charge shall continue until such time as the net
50 balance of the stabilization reserve fund is not less
51 than the projected sum of premiums for physicians and
52 health care providers, other than for-profit and

1 not-for-profit nursing homes and assisted living
2 facilities, to be written in the year following
3 valuation date.

4 Revised Law

5 Sec. 2203.303. POLICYHOLDER'S STABILIZATION RESERVE FUND
6 FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) The
7 policyholder's stabilization reserve fund for nursing homes and
8 assisted living facilities is collected and administered by the
9 association as provided by this section, Section 2203.304, and the
10 plan of operation.

11 (b) The policyholder's stabilization reserve fund shall be:

12 (1) credited with:

13 (A) all policyholder's stabilization reserve
14 fund charges collected under Section 2203.304; and

15 (B) the net earnings on liability insurance
16 policies issued to nursing homes and assisted living facilities;

17 (2) charged with any deficit sustained by nursing
18 homes and assisted living facilities from the association's
19 operation during the previous year;

20 (3) treated as a liability of the association along
21 with, and in the same manner as, premium and loss reserves; and

22 (4) valued annually by the board of directors as of the
23 close of the preceding year.

24 (c) The policyholder's stabilization reserve fund under
25 this section, and any earnings of the fund, are state funds and
26 shall be held by the comptroller outside the state treasury on
27 behalf of, and with legal title in, the department. No part of the
28 fund or the earnings of the fund may inure to the benefit of an
29 association member, a policyholder, or another individual. The
30 fund assets may be used in accordance with the association's plan of
31 operation only to implement this chapter and for the purposes of the
32 association, including to make payment to satisfy, wholly or
33 partly, the liability of the association regarding a claim made on a
34 policy written by the association.

35 (d) Notwithstanding Sections 11, 12, and 13, Article

1 21.49-3, the policyholder's stabilization reserve fund under this
2 section may be terminated only by law.

3 (e) Notwithstanding Section 11, Article 21.49-3, on
4 termination of the policyholder's stabilization reserve fund under
5 this section, all assets of the fund shall be transferred to the
6 general revenue fund to be appropriated for purposes related to
7 ensuring the provision of the kinds of liability insurance coverage
8 that the association may provide under this chapter to nursing
9 homes and assisted living facilities. (V.T.I.C. Art. 21.49-3,
10 Secs. 4B(a) (part), (c), (e), (f), (g), (h).)

11 Source Law

12 Sec. 4B. (a) There is hereby created a
13 stabilization reserve fund for for-profit and
14 not-for-profit nursing homes and assisted living
15 facilities that shall be administered as provided in
16 this section and in the plan of operation of the
17 association. . . .

18 (c) The stabilization reserve fund shall be
19 collected and administered by the association and
20 shall be treated as a liability of the association
21 along with and in the same manner as premium and loss
22 reserves. The fund shall be valued annually by the
23 board of directors as of the close of the last
24 preceding year.

25 (e) The stabilization reserve fund shall be
26 credited with all stabilization reserve fund charges
27 collected from for-profit and not-for-profit nursing
28 homes and assisted living facilities and the net
29 earnings on liability insurance policies issued to
30 for-profit and not-for-profit nursing homes and
31 assisted living facilities and shall be charged with
32 any deficit sustained by for-profit and not-for-profit
33 nursing homes and assisted living facilities from the
34 prior year's operation of the association.

35 (f) The stabilization reserve fund established
36 under this section, and any earnings of the fund, are
37 state funds and shall be held by the comptroller
38 outside the state treasury on behalf of, and with legal
39 title in, the department. No part of the fund, or the
40 earnings of the fund, may inure to the benefit of a
41 member of the association, a policyholder, or any
42 other individual, and the assets of the fund may be
43 used in accordance with the association's plan of
44 operation only to implement this article and for the
45 purposes of the association, including making payment
46 to satisfy, in whole or in part, the liability of the
47 association regarding a claim made on a policy written
48 by the association.

49 (g) Notwithstanding Sections 11, 12, and 13 of
50 this article, the stabilization reserve fund
51 established under this section may be terminated only
52 by law.

53 (h) Notwithstanding Section 11 of this article,
54 on termination of the stabilization reserve fund

1 established under this section, all assets of the fund
2 shall be transferred to the general revenue fund to be
3 appropriated for purposes related to ensuring the
4 kinds of liability insurance coverage that may be
5 provided by the association under this article for
6 for-profit and not-for-profit nursing homes and
7 assisted living facilities.

8 Revisor's Note

9 (1) Section 4B(a), V.T.I.C. Article 21.49-3,
10 states that "[t]here is hereby created a stabilization
11 reserve fund" for for-profit and not-for-profit
12 nursing homes and assisted living facilities. The
13 revised law omits the language as executed.

14 (2) Section 4B(c), V.T.I.C. Article 21.49-3,
15 refers to the "last preceding year." The revised law
16 omits "last" for the reason stated in Revisor's Note
17 (2) to Section 2203.301.

18 Revised Law

19 Sec. 2203.304. POLICYHOLDER'S STABILIZATION RESERVE FUND
20 CHARGE FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) Each
21 policyholder that is a nursing home or assisted living facility
22 shall pay annually into the policyholder's stabilization reserve
23 fund under Section 2203.303 a charge that:

24 (1) is in an amount established annually by advisory
25 directors chosen by nursing homes and assisted living facilities
26 eligible for insurance through the association in accordance with
27 the plan of operation;

28 (2) is in proportion to each premium payment due for
29 liability insurance through the association; and

30 (3) is separately stated in the policy.

31 (b) A charge stated in a policy as required by Subsection
32 (a)(3) is not:

33 (1) a part of premiums; or

34 (2) subject to premium taxation or a servicing fee,
35 acquisition cost, or any other similar charge.

36 (c) If the association offers an installment payment plan
37 for coverage obtained through the association, the association may:

1 (1) permit payment of the policyholder's stabilization
2 reserve fund charge under this section on an installment basis; or

3 (2) require the policyholder to pay the charge as an
4 annual lump sum.

5 (d) Collections of the policyholder's stabilization reserve
6 fund charge under this section shall continue only until the net
7 balance of the policyholder's stabilization reserve fund under
8 Section 2203.303 is not less than the projected sum of premiums for
9 nursing homes and assisted living facilities to be written in the
10 year following the valuation date. (V.T.I.C. Art. 21.49-3, Secs.
11 4B(b), as amended Acts 78th Leg., R.S., Chs. 56, 141, (d).)

12 Source Law

13 (b) [as amended Acts 78th Leg., R.S., Ch. 56]
14 Each policyholder shall pay annually into the
15 stabilization reserve fund a charge, the amount of
16 which shall be established annually by advisory
17 directors chosen by for-profit and not-for-profit
18 nursing homes eligible for insurance in the
19 association in accordance with the plan of operation.
20 The charge shall be in proportion to each premium
21 payment due for liability insurance through the
22 association. The charge shall be separately stated in
23 the policy, but shall not constitute a part of premiums
24 or be subject to premium taxation, servicing fees,
25 acquisition costs, or any other similar charges. If
26 the association offers an installment payment plan for
27 coverage obtained through the association, the
28 association may permit payment of the stabilization
29 reserve fund charge on an installment basis or may
30 require the policyholder to pay the charge as an annual
31 lump sum.

32 (b) [as amended Acts 78th Leg., R.S., Ch. 141]
33 Each policyholder shall pay annually into the
34 stabilization reserve fund a charge, the amount of
35 which shall be established annually by advisory
36 directors chosen by for-profit and not-for-profit
37 nursing homes and assisted living facilities eligible
38 for insurance in the association in accordance with
39 the plan of operation. The charge shall be in
40 proportion to each premium payment due for liability
41 insurance through the association. The charge shall
42 be separately stated in the policy, but shall not
43 constitute a part of premiums or be subject to premium
44 taxation, servicing fees, acquisition costs, or any
45 other similar charges.

46 (d) Collections of the stabilization reserve
47 fund charge shall continue only until such time as the
48 net balance of the stabilization reserve fund is not
49 less than the projected sum of premiums for for-profit
50 and not-for-profit nursing homes and assisted living
51 facilities to be written in the year following the
52 valuation date.

1 Revised Law

2 Sec. 2203.305. SEPARATE FUNDS. The policyholder's
3 stabilization reserve fund for physicians and health care providers
4 other than nursing homes and assisted living facilities described
5 by Section 2203.301 is separate from the policyholder's
6 stabilization reserve fund for nursing homes and assisted living
7 facilities described by Section 2203.303. (V.T.I.C. Art. 21.49-3,
8 Secs. 4A(a) (part), 4B(a) (part).)

9 Source Law

10 Sec. 4A. (a) . . . The stabilization reserve
11 fund created by this section is separate and distinct
12 from the stabilization reserve fund for for-profit and
13 not-for-profit nursing homes and assisted living
14 facilities created by Section 4B of this article.

15 Sec. 4B. (a) . . . The stabilization reserve
16 fund created by this section is separate and distinct
17 from the policyholder's stabilization reserve fund for
18 physicians and health care providers, other than
19 for-profit and not-for-profit nursing homes and
20 assisted living facilities, created by Section 4A of
21 this article.

22 Revisor's Note

23 Sections 4A(a) and 4B(a), V.T.I.C. Article
24 21.49-3, refer to "separate and distinct" funds. The
25 revised law omits the references to "distinct" because
26 "distinct" is included in the meaning of "separate."

27 [Sections 2203.306-2203.350 reserved for expansion]

28 SUBCHAPTER H. REVENUE BOND PROGRAM

29 Revised Law

30 Sec. 2203.351. PURPOSE. The legislature finds that the
31 issuance of bonds to provide a method to raise funds to provide
32 professional liability insurance for nursing homes and assisted
33 living facilities in this state through the association is to
34 benefit the public and to further a public purpose. (V.T.I.C. Art.
35 21.49-3d, Sec. 1.)

36 Source Law

37 Art. 21.49-3d

38 Sec. 1. The legislature finds that the issuance
39 of bonds to provide a method to raise funds to provide
40 professional liability insurance through the
41 association for nursing homes and assisted living

1 facilities in this state is for the benefit of the
2 public and in furtherance of a public purpose.

3 Revised Law

4 Sec. 2203.352. DEFINITIONS. In this subchapter:

5 (1) "Board" means the board of directors of the Texas
6 Public Finance Authority.

7 (2) "Bond resolution" means the resolution or order
8 authorizing bonds to be issued under this subchapter. (V.T.I.C.
9 Art. 21.49-3d, Secs. 2(2), (3).)

10 Source Law

11 Sec. 2. In this article:

12 (2) "Bond resolution" means the resolution
13 or order authorizing the bonds to be issued under this
14 article.

15 (3) "Board" means the board of directors
16 of the Texas Public Finance Authority.

17 Revisor's Note

18 Section 2(4), V.T.I.C. Article 21.49-3d, defines
19 "insurer" to mean an insurer required to be a member of
20 the joint underwriting association under Section 3,
21 V.T.I.C. Article 21.49-3, revised in relevant part in
22 this chapter in Section 2203.055. For consistency
23 with the terminology used in Subchapters A-G and I of
24 this chapter, the revised law omits the definition of
25 "insurer" and throughout this subchapter substitutes
26 "association member" for references to "insurer." The
27 omitted law reads:

28 (4) "Insurer" means any insurer
29 required to be a member of the association
30 under Section 3, Article 21.49-3 of this
31 code.

32 Revised Law

33 Sec. 2203.353. APPLICABILITY OF OTHER LAWS. The following
34 laws apply to bonds issued under this subchapter to the extent
35 consistent with this subchapter:

36 (1) Chapters 1201, 1202, 1204, 1205, 1231, 1232, and
37 1371, Government Code; and

38 (2) Subchapter A, Chapter 1206, Government Code.

(V.T.I.C. Art. 21.49-3d, Secs. 3(b), 4.)

Source Law

[Sec. 3]

(b) To the extent not inconsistent with this article, Chapter 1232, Government Code, applies to bonds issued under this article. In the event of a conflict, this article controls.

Sec. 4. The following laws apply to bonds issued under this article to the extent consistent with this article:

(1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371, Government Code; and

(2) Subchapter A, Chapter 1206, Government Code.

Revisor's Note

Section 3(b), V.T.I.C. Article 21.49-3d, provides that, to the extent not inconsistent with that article, Chapter 1232, Government Code, applies to bonds issued under that article but that, in the event of a conflict, that article controls. The revised law omits the statement that in the event of a conflict V.T.I.C. Article 21.49-3d controls over Chapter 1232, Government Code, because that is implied by the statement that Chapter 1232, Government Code, applies to bonds issued under V.T.I.C. Article 21.49-3d to the extent not inconsistent with that article.

Revised Law

Sec. 2203.354. ISSUANCE OF BONDS AUTHORIZED. On behalf of the association and subject to Section 2203.355, the Texas Public Finance Authority shall issue revenue bonds to:

(1) fund the policyholder's stabilization reserve fund for nursing homes and assisted living facilities under Section 2203.303;

(2) pay costs related to issuing the bonds; and

(3) pay other costs related to the bonds as determined by the board. (V.T.I.C. Art. 21.49-3d, Sec. 3(a).)

Source Law

Sec. 3. (a) On behalf of the association, the Texas Public Finance Authority shall issue revenue

1 bonds to:

2 (1) fund the stabilization reserve fund
3 for for-profit and not-for-profit nursing homes and
4 assisted living facilities established under Section
5 4B, Article 21.49-3 of this code;

6 (2) pay costs related to issuance of the
7 bonds; and

8 (3) pay other costs related to the bonds as
9 may be determined by the board.

10 Revisor's Note

11 Section 3(a), V.T.I.C. Article 21.49-3d,
12 provides that the Texas Public Finance Authority shall
13 issue revenue bonds for the joint underwriting
14 association for certain purposes. Section 5, V.T.I.C.
15 Article 21.49-3d, revised in this chapter as Section
16 2203.355, limits the total amount of bonds the
17 authority may issue on behalf of the association. For
18 the convenience of the reader, the revised law adds a
19 cross-reference to Section 2203.355.

20 Revised Law

21 Sec. 2203.355. LIMITATION ON AMOUNT OF BONDS. The Texas
22 Public Finance Authority may issue on behalf of the association
23 bonds in a total amount not to exceed \$75 million. (V.T.I.C. Art.
24 21.49-3d, Sec. 5.)

25 Source Law

26 Sec. 5. The Texas Public Finance Authority may
27 issue, on behalf of the association, bonds in a total
28 amount not to exceed \$75 million.

29 Revised Law

30 Sec. 2203.356. TERMS OF ISSUANCE. (a) Bonds issued under
31 this subchapter may be issued at a public or private sale.

32 (b) Bonds must:

33 (1) be issued in the name of the association; and

34 (2) mature not more than 10 years after the date
35 issued. (V.T.I.C. Art. 21.49-3d, Sec. 6.)

36 Source Law

37 Sec. 6. (a) Bonds may be issued at public or
38 private sale.

39 (b) Bonds may mature not more than 10 years
40 after the date issued.

41 (c) Bonds must be issued in the name of the
42 association.

Revised Law

Sec. 2203.357. CONTENTS OF BOND RESOLUTION; ADMINISTRATION
OF ACCOUNTS. (a) In a bond resolution, the board may:

(1) provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the bonds, including an interest and sinking fund account, a reserve account, and other accounts; and

(2) make additional covenants with regard to the bonds and the designated income and receipts of the association pledged to the payment of the bonds.

(b) The association shall administer the accounts in accordance with this chapter. (V.T.I.C. Art. 21.49-3d, Secs. 7, 8.)

Source Law

Sec. 7. In a bond resolution, the board may make additional covenants with respect to the bonds and the designated income and receipts of the association pledged to their payment and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 8. (a) A bond resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The association shall administer the accounts in accordance with Article 21.49-3 of this code.

Revised Law

Sec. 2203.358. SOURCE OF PAYMENT. (a) Bonds issued under this subchapter are payable only from:

(1) the surcharge fee established under Section 2203.359; or

(2) other sources the association is authorized to levy and charge and from which the association is authorized to collect in connection with paying any portion of the bonds.

(b) The bonds are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state.

(c) Each bond must:

(1) include a statement that the state is not

1 obligated to pay any amount on the bond and that the faith, credit,
2 and taxing authority of this state are not pledged, given, or loaned
3 to those payments; and

4 (2) state on the bond's face that the bond:

5 (A) is payable solely from the revenue pledged
6 for that purpose; and

7 (B) is not a legal or moral obligation of the
8 state. (V.T.I.C. Art. 21.49-3d, Sec. 9.)

9 Source Law

10 Sec. 9. (a) Bonds are payable only from the
11 surcharge fee established in Section 10 of this
12 article or other sources the association is authorized
13 to levy, charge, and collect in connection with paying
14 any portion of the bonds.

15 (b) Bonds are obligations solely of the
16 association. Bonds do not create a pledging, giving,
17 or lending of the faith, credit, or taxing authority of
18 this state.

19 (c) Each bond must include a statement that the
20 state is not obligated to pay any amount on the bond
21 and that the faith, credit, and taxing authority of
22 this state are not pledged, given, or lent to those
23 payments.

24 (d) Each bond issued under this article must
25 state on its face that the bond is payable solely from
26 the revenues pledged for that purpose and that the bond
27 does not and may not constitute a legal or moral
28 obligation of the state.

29 Revised Law

30 Sec. 2203.359. SURCHARGE FEE. (a) A surcharge fee is
31 assessed against:

32 (1) each association member; and

33 (2) the association.

34 (b) The commissioner shall set the surcharge fee in an
35 amount sufficient to pay all debt service on the bonds issued under
36 this subchapter. Each association member and the association shall
37 pay the surcharge fee as required by the commissioner by rule.

38 (c) The comptroller shall collect the surcharge fee and the
39 department shall reimburse the comptroller in the manner described
40 by Section 201.052.

41 (d) The commissioner, in consultation with the comptroller,
42 may coordinate payment and collection of the surcharge fee with
43 other payments made by association members and collected by the

1 comptroller.

2 (e) Except as provided by Subsection (f), as a condition of
3 engaging in the business of insurance in this state, an association
4 member agrees that, if the member leaves the liability insurance
5 market in this state, the member remains obligated to pay the
6 member's share of the surcharge fee assessed under this section
7 until the bonds are retired. The amount assessed against a member
8 under this subsection must be:

9 (1) proportionate to the member's share of the
10 liability insurance market, including automobile liability
11 insurance, in this state as of the last complete reporting period
12 before the date the member ceases to engage in the liability
13 insurance business in this state; and

14 (2) based on the member's gross premiums for liability
15 insurance, including automobile liability insurance, for the
16 member's last reporting period.

17 (f) An association member is not required to pay the
18 proportionate amount under Subsection (e) in any year in which the
19 surcharge fee assessed against association members continuing to
20 write liability insurance in this state is sufficient to service
21 the bond obligation. (V.T.I.C. Art. 21.49-3d, Sec. 10.)

22 Source Law

23 Sec. 10. (a) A surcharge fee is assessed
24 against:

- 25 (1) each insurer; and
26 (2) the association.

27 (b) The surcharge fee shall be set by the
28 commissioner in an amount sufficient to pay all debt
29 service on the bonds. The surcharge shall be paid by
30 each insurer and the association as required by
31 commissioner rule.

32 (c) The comptroller shall collect the surcharge
33 fee and the department shall reimburse the comptroller
34 in the manner described by Article 4.19 of this code.

35 (d) The commissioner, in consultation with the
36 comptroller, may coordinate payment and collection of
37 the surcharge fee with other payments made by insurers
38 and collected by the comptroller.

39 (e) As a condition of engaging in the business
40 of insurance in this state, an insurer agrees that if
41 the company leaves the market for liability insurance
42 in this state the insurer remains obligated to pay,
43 until the bonds are retired, the insurer's share of the
44 surcharge fee assessed under this section in an amount
45 proportionate to that insurer's share of the market for

1 liability insurance, including motor vehicle
2 liability insurance, in this state as of the last
3 complete reporting period before the date on which the
4 insurer ceases to engage in that insurance business in
5 this state. The proportion assessed against the
6 insurer shall be based on the insurer's gross premiums
7 for liability insurance, including motor vehicle
8 liability insurance, for the insurer's last reporting
9 period. However, an insurer is not required to pay the
10 proportionate amount in any year in which the
11 surcharge fee assessed against insurers continuing to
12 write liability insurance in this state is sufficient
13 to service the bond obligation.

14 Revisor's Note

15 Section 10(e), V.T.I.C. Article 21.49-3d, refers
16 to "motor vehicle liability insurance." The revised
17 law substitutes "automobile liability insurance" for
18 the reference to "motor vehicle liability insurance"
19 for consistency with terminology used in this code and
20 because "automobile" insurance is the term more
21 commonly used to describe the kind of insurance that
22 provides coverage for motor vehicles.

23 Revised Law

24 Sec. 2203.360. EXEMPTION FROM TAXATION. Bonds issued under
25 this subchapter, any interest from the bonds, and all assets
26 pledged to secure the payment of the bonds are exempt from taxation
27 by the state or a political subdivision of this state. (V.T.I.C.
28 Art. 21.49-3d, Sec. 11.)

29 Source Law

30 Sec. 11. The bonds issued under this article,
31 and any interest from the bonds, and all assets pledged
32 to secure the payment of the bonds are free from
33 taxation by the state or a political subdivision of
34 this state.

35 Revised Law

36 Sec. 2203.361. AUTHORIZED INVESTMENTS. Bonds issued under
37 this subchapter are authorized investments under Subchapter B,
38 Chapter 424, and Subchapter D, Chapter 425. (V.T.I.C. Art.
39 21.49-3d, Sec. 12.)

40 Source Law

41 Sec. 12. The bonds issued under this article
42 constitute authorized investments under Article 2.10
43 and Subpart A, Part I, Article 3.39, of this code.

1 Revisor's Note

2 Section 12, V.T.I.C. Article 21.49-3, provides
3 that bonds issued under that article are authorized
4 investments under V.T.I.C. Article 2.10 and under
5 Subpart A, Part I, V.T.I.C. Article 3.39. Those
6 articles are revised in pertinent part in Subchapter
7 B, Chapter 424, and Subchapter D, Chapter 425,
8 respectively. While these subchapters contain
9 provisions derived from laws other than Article 2.10
10 and Subpart A, Part I, V.T.I.C. Article 3.39, it is
11 appropriate to refer to the subchapters in their
12 entirety because inclusion of the additional
13 provisions in the reference does not change the
14 substantive effect of the reference.

15 Revised Law

16 Sec. 2203.362. STATE PLEDGE REGARDING BOND OWNER RIGHTS AND
17 REMEDIES. (a) The state pledges to and agrees with the owners of
18 bonds issued in accordance with this subchapter that the state will
19 not limit or alter the rights vested in the association to fulfill
20 the terms of agreements made with the owners or impair the rights
21 and remedies of the owners until the following obligations are
22 fully discharged:

- 23 (1) the bonds;
24 (2) any bond premium;
25 (3) interest; and
26 (4) all costs and expenses related to an action or
27 proceeding by or on behalf of the owners.

28 (b) The association may include the state's pledge and
29 agreement under Subsection (a) in an agreement with the owners of
30 the bonds. (V.T.I.C. Art. 21.49-3d, Sec. 13.)

31 Source Law

32 Sec. 13. The state pledges to and agrees with
33 the owners of any bonds issued in accordance with this
34 article that the state will not limit or alter the
35 rights vested in the association to fulfill the terms
36 of any agreements made with the owners of the bonds or

1 in any way impair the rights and remedies of those
2 owners until the bonds, any premium or interest, and
3 all costs and expenses in connection with any action or
4 proceeding by or on behalf of those owners are fully
5 met and discharged. The association may include this
6 pledge and agreement of the state in any agreement with
7 the owners of the bonds.

8 Revised Law

9 Sec. 2203.363. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of
10 mandamus and any other legal or equitable remedy are available to a
11 party in interest to require the association or another party to
12 fulfill an agreement or perform a function or duty under:

- 13 (1) this subchapter;
14 (2) the Texas Constitution; or
15 (3) a bond resolution. (V.T.I.C. Art. 21.49-3d, Sec.
16 14.)

17 Source Law

18 Sec. 14. A writ of mandamus and all other legal
19 and equitable remedies are available to any party at
20 interest to require the association and any other
21 party to carry out agreements and to perform functions
22 and duties under this article, the Texas Constitution,
23 or a bond resolution.

24 [Sections 2203.364-2203.400 reserved for expansion]

25 SUBCHAPTER I. APPEALS

26 Revised Law

27 Sec. 2203.401. DEFINITION. In this subchapter, "act"
28 includes a ruling or decision. (New.)

29 Revisor's Note

30 The revised law adds a definition of "act" for
31 drafting convenience and to eliminate frequent,
32 unnecessary repetition of the substance of the
33 definition.

34 Revised Law

35 Sec. 2203.402. APPEAL TO BOARD OF DIRECTORS; HEARING. (a)
36 A person insured or applying for insurance under this chapter, the
37 person's authorized representative, or an affected insurer that may
38 be aggrieved by an act of the association may appeal to the board of
39 directors not later than the 30th day after the date the act occurs.
40 At the time the person is notified of the act, the association shall

1 provide to the person written notice of the person's right to appeal
2 under this subsection.

3 (b) The board of directors shall:

4 (1) hear an appeal brought under Subsection (a) not
5 later than the 30th day after the date the board of directors
6 receives the appeal; and

7 (2) give not less than 10 days' written notice of the
8 time and place of the hearing to the person bringing the appeal or
9 the person's authorized representative. (V.T.I.C. Art. 21.49-3,
10 Secs. 7(a), (b) (part).)

11 Source Law

12 Sec. 7. (a) Any person insured or applying for
13 insurance pursuant to this Act, or his duly authorized
14 representative, or any affected insurer who may be
15 aggrieved by an act, ruling, or decision of the
16 association, may, within 30 days after such act,
17 ruling, or decision, appeal to the board of directors
18 of the association. At the time the person is notified
19 of the act, ruling, or decision of the association, the
20 association shall provide to the person written notice
21 of the person's right to appeal under this subsection.

22 (b) The board of directors of the association
23 shall hear said appeal within 30 days after receipt of
24 such request or appeal and shall give not less than 10
25 days' written notice of the time and place of hearing
26 to the person making such request or the duly
27 authorized representative. . . .

28 Revisor's Note

29 (1) Sections 7(a) and (b), V.T.I.C. Article
30 21.49-3, refer to a person's "duly authorized
31 representative." The revised law omits the references
32 to "duly" for the reason stated in Revisor's Note (2)
33 to Section 2203.002.

34 (2) Section 7(b), V.T.I.C. Article 21.49-3,
35 prescribes the time during which the joint
36 underwriting association's board of directors must
37 hear a "request or appeal," meaning an appeal brought
38 under Section 7(a) of that article, and refers to the
39 person making that "request." Section 7(c) of that
40 article, revised in relevant part in this chapter as
41 Section 2203.404, refers to a "request or appeal,"

1 meaning an appeal brought by making a written request
2 to the commissioner of insurance for a hearing. For
3 consistency of terminology within this subchapter, the
4 revised law substitutes "appeal" for the quoted
5 language.

6 Revised Law

7 Sec. 2203.403. DECISION OF BOARD OF DIRECTORS. (a) Not
8 later than the 10th day after the date of the hearing under Section
9 2203.402(b), the board of directors shall affirm, reverse, or
10 modify the board's previous action or the appealed act.

11 (b) At the time the person is notified of the final action of
12 the board of directors, the association shall provide to the person
13 written notice of the person's right to appeal under Section
14 2203.404. (V.T.I.C. Art. 21.49-3, Sec. 7(b) (part).)

15 Source Law

16 (b) . . . Within 10 days after such hearing,
17 the board of directors of the association shall
18 affirm, reverse, or modify its previous action or the
19 act, ruling, or decision appealed to the board of
20 directors of the association. At the time the person
21 is notified of the final action of the board of
22 directors of the association, the association shall
23 provide to the person written notice of the person's
24 right to appeal under Subsection (c) of this section.

25 Revised Law

26 Sec. 2203.404. APPEAL TO COMMISSIONER; HEARING. (a) Not
27 later than the 30th day after the date of the final action of the
28 board of directors under Section 2203.403, a person insured or
29 applying for insurance aggrieved by that final action may appeal to
30 the commissioner by making a written request for a hearing.

31 (b) The appeal shall be heard not later than the 30th day
32 after the date the appeal is received. The person bringing the
33 appeal or the person's authorized representative must be given
34 written notice of the time and place of the hearing on or before the
35 10th day before the date of the hearing. (V.T.I.C. Art. 21.49-3,
36 Sec. 7(c) (part).)

37 Source Law

38 (c) In the event any person insured or applying

1 for insurance is aggrieved by the final action of the
2 board of directors of the association, the aggrieved
3 party may, within 30 days after such action, make a
4 written request to the commissioner for a hearing
5 thereon. The commissioner shall hear the appeal from
6 an act, ruling, or decision of the association, within
7 30 days after receipt of such request or appeal and
8 shall give not less than 10 days' written notice of the
9 time and place of hearing to the person, or his duly
10 authorized representative, appealing from the act,
11 ruling, or decision of the board of directors of the
12 association. . . .

13 Revisor's Note

14 Section 7(c), V.T.I.C. Article 21.49-3, refers to
15 a person's "duly authorized representative." The
16 revised law omits the reference to "duly" for the
17 reason stated in Revisor's Note (2) to Section
18 2203.002.

19 Revised Law

20 Sec. 2203.405. COMMISSIONER'S DECISION. (a) Not later
21 than the 30th day after the date of the hearing under Section
22 2203.404, the commissioner shall affirm, reverse, or modify the
23 appealed act.

24 (b) Pending the hearing and decision, the commissioner may
25 suspend or postpone the effective date of a rule or of the act
26 appealed. (V.T.I.C. Art. 21.49-3, Sec. 7(c) (part).)

27 Source Law

28 (c) . . . Within 30 days after such hearing,
29 the commissioner shall affirm, reverse, or modify the
30 act, ruling, or decision appealed to the commissioner.
31 Pending such hearing and decision thereon, the
32 commissioner may suspend or postpone the effective
33 date of the rule or of the act, ruling, or decision
34 appealed.

35 Revised Law

36 Sec. 2203.406. APPEAL OF COMMISSIONER'S DECISION. (a) The
37 association or a person aggrieved by an order or decision of the
38 commissioner may appeal in accordance with Subchapter D, Chapter
39 36.

40 (b) At the time the person is notified of the commissioner's
41 order or decision, the commissioner shall provide to the person
42 written notice of the person's right to appeal under this section.
43 (V.T.I.C. Art. 21.49-3, Sec. 7(d).)

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Source Law

(d) The association, or the person aggrieved by any order or decision of the commissioner, may thereafter appeal in accordance with Article 1.04 of this code. At the time the person is notified of the decision of the commissioner, the commissioner shall provide to the person written notice of the person's right to appeal under this subsection.

CHAPTER 2204. TEXAS INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

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CHAPTER 2204. TEXAS INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 2204.001. DEFINITIONS. In this chapter:

- (1) "Directors" means the board of directors of the exchange.
- (2) "Exchange" means the Texas Insurance Exchange.
- (3) "Member" means a person, firm, corporation, or underwriting syndicate authorized by the directors to insure or reinsure risks through the exchange. (V.T.I.C. Art. 1.14-3, Secs. 1(1), (3), (4).)

1 Source Law

2 Sec. 1. In this article:

3 (1) "Exchange" means the Texas Insurance
4 Exchange.

5 (3) "Directors" means the board of
6 directors of the exchange.

7 (4) "Member" means a person, firm,
8 corporation, or underwriting syndicate authorized by
9 the directors of the exchange to insure or reinsure
10 risks through the exchange.

11 Revisor's Note

12 Section 1(2), V.T.I.C. Article 1.14-3, defines
13 "board" as the State Board of Insurance. The revised
14 law omits the definition as unnecessary. Chapter 685,
15 Acts of the 73rd Legislature, Regular Session, 1993,
16 abolished the State Board of Insurance and transferred
17 its functions to the commissioner of insurance and the
18 Texas Department of Insurance. Throughout this
19 chapter, references to the board have been changed
20 appropriately. The omitted law reads:

21 (2) "Board" means the State
22 Board of Insurance.

23 Revised Law

24 Sec. 2204.002. EXEMPTION. (a) This chapter, Chapters 251
25 and 261, and rules adopted by the commissioner or comptroller, as
26 applicable, apply to the exchange, a member, and insurance and
27 reinsurance written through the exchange, except to the extent
28 exempted by rules adopted by the commissioner or comptroller, as
29 applicable.

30 (b) An exemption may not be:

31 (1) unfairly discriminatory; or

32 (2) detrimental to the solvency of an insurer
33 authorized to engage in the business of insurance in this state.
34 (V.T.I.C. Art. 1.14-3, Sec. 9.)

35 Source Law

36 Sec. 9. This article and regulations
37 promulgated by the commissioner or the comptroller, as
38 applicable, apply to the exchange, its members, and
39 the insurance and reinsurance written through the
40 exchange, except to the extent exempt by regulations
41 of the commissioner or the comptroller, as applicable.

1 An exemption may not be unfairly discriminatory or
2 detrimental to the solvency of licensed insurers.

3 Revisor's Note

4 (1) Section 9, V.T.I.C. Article 1.14-3, refers
5 to the applicability of Article 1.14-3 to the Texas
6 Insurance Exchange and members of the exchange. With
7 the exception of Section 8, Article 1.14-3, the
8 article is revised as this chapter. Section 8 was
9 revised in 2003 in Chapters 251 and 261 of this code,
10 which took effect April 1, 2005. The revised law is
11 drafted accordingly.

12 (2) Section 9, V.T.I.C. Article 1.14-3, refers
13 to "regulations promulgated" by and "regulations of"
14 the commissioner of insurance or the comptroller.
15 Throughout this chapter, the revised law substitutes
16 "rules adopted" for "regulations promulgated" or
17 "regulations of," as applicable. Under Section
18 311.005(5), Government Code (Code Construction Act),
19 applicable to the revised law, a rule is defined to
20 include a regulation, and "rule" is the more commonly
21 used term. In addition, "adopted" and "promulgated"
22 are synonymous in context, and the former is more
23 commonly used.

24 (3) Section 9, V.T.I.C. Article 1.14-3, refers
25 to "licensed" insurers. Throughout this chapter, the
26 revised law substitutes "authorized" for "licensed"
27 because "certificate of authority" is the term used
28 throughout this code in relation to an entity's
29 authority to engage in business.

30 Revised Law

31 Sec. 2204.003. RULES. The commissioner shall adopt rules
32 for the operation and management of the exchange. (V.T.I.C.
33 Art. 1.14-3, Sec. 4 (part).)

34 Source Law

35 Sec. 4. The board shall promulgate regulations

1 under which the exchange shall be operated and
2 managed, and

3 [Sections 2204.004-2204.050 reserved for expansion]

4 SUBCHAPTER B. OPERATION AND MANAGEMENT

5 Revised Law

6 Sec. 2204.051. PURPOSE OF EXCHANGE; SPECIFIC AUTHORIZATION
7 FOR CERTAIN INSURANCE. (a) The exchange shall provide a facility
8 for underwriting:

9 (1) reinsurance of any kind of insurance;

10 (2) direct insurance of any kind of risk located
11 entirely outside the United States;

12 (3) direct insurance of any kind of risk that:

13 (A) is located in another state; and

14 (B) qualifies for placement under the excess and
15 surplus lines requirements of the jurisdiction in which the risk is
16 located; and

17 (4) a risk located in this state that has been
18 submitted to and certified as rejected by a committee representing
19 at least three and not more than seven insurers authorized to engage
20 in the business of insurance in this state and subject to conditions
21 imposed by rules adopted by the commissioner.

22 (b) For purposes of Chapter 101, insurance or reinsurance a
23 member writes to cover a risk described by Subsection (a)(4) is
24 considered to be specifically authorized by the laws of this state.
25 (V.T.I.C. Art. 1.14-3, Secs. 3, 11.)

26 Source Law

27 Sec. 3. The purpose of the exchange is to
28 provide a facility for underwriting the following:

29 (1) reinsurance of any kind of insurance;

30 (2) direct insurance of any kind of risk
31 located entirely outside the United States;

32 (3) direct insurance of any kind of risk
33 located in a state of the United States other than this
34 state if the risk qualifies for placement under the
35 excess and surplus lines requirements of the
36 jurisdiction in which the risk is located; and

37 (4) a risk located in this state that is
38 submitted to and certified as having been rejected by a
39 committee representative of not fewer than three and
40 not more than seven insurers licensed to do an
41 insurance business in this state and subject to
42 conditions imposed by regulations promulgated by the
43 board.

Sec. 11. For purposes of Article 1.14-1 of this code, insurance and reinsurance written under Subdivision (4) of Section 3 of this article written by members of the exchange are deemed to have been written in accordance with specific authorization of the laws of this state.

Revised Law

Sec. 2204.052. OPERATION OF EXCHANGE. The exchange shall operate under:

(1) a constitution and bylaws adopted by the exchange and approved by the department; and

(2) rules adopted by the commissioner under Section 2204.003. (V.T.I.C. Art. 1.14-3, Secs. 2, 5(a).)

Source Law

Sec. 2. The Texas Insurance Exchange is created and shall operate under a constitution and bylaws and under regulations promulgated by the board.

Sec. 5. (a) The exchange shall function under a constitution and bylaws adopted by it and approved by the board.

Revisor's Note

Section 2, V.T.I.C. Article 1.14-3, provides that the Texas Insurance Exchange "is created." The revised law omits as executed the reference to the creation of the exchange.

Revised Law

Sec. 2204.053. CONSTITUTION AND BYLAWS. (a) In this section:

(1) "Principal office" means an office at which officers and personnel who are engaged in administration, underwriting, claims adjustment, policyholders' service, marketing, accounting, recordkeeping, and support services are located.

(2) "Subscriber" means a person, firm, corporation, or other organization that, on payment of fees or dues required by the constitution and bylaws, the directors designate as a subscriber.

(b) The constitution and bylaws of the exchange must provide for:

1 (1) the election of nine directors, four of whom
2 represent the public interest and are not members, subscribers, or
3 agents of the exchange;

4 (2) the locations of the principal offices of the
5 exchange and the members in this state for transacting business
6 described by Section 2204.051(a);

7 (3) the submission by the exchange, members, and
8 applicants for membership in the exchange of financial information
9 required by rules adopted by the commissioner;

10 (4) the establishment and maintenance by the exchange
11 of a security fund in a form and amount specified by rules adopted
12 by the commissioner;

13 (5) the voting power of members; and

14 (6) members' rights and duties, including the manner
15 of conducting business, financial stability, dues, membership
16 fees, mandatory arbitration, and any other matter necessary or
17 appropriate to conduct business authorized by this chapter.

18 (c) For an agent transacting business on the exchange to
19 participate in the operation and management of the exchange, the
20 constitution and bylaws of the exchange must provide for the voting
21 power and other rights granted to a nonprofit corporation under the
22 Business Organizations Code.

23 (c-1) Notwithstanding Subsection (c), on or before December
24 31, 2009, for an agent transacting business on the exchange to
25 participate in the operation and management of the exchange, the
26 constitution and bylaws of the exchange must provide for the voting
27 power and other rights granted to a nonprofit corporation under the
28 Texas Non-Profit Corporation Act (Article 1396-1.01 et seq.,
29 Vernon's Texas Civil Statutes) or the Business Organizations Code,
30 as applicable.

31 (c-2) This subsection and Subsection (c-1) expire January
32 1, 2010.

33 (d) In a manner that complies with the requirements adopted
34 under this section, the exchange may, with the department's

1 approval, amend the exchange's constitution or bylaws in accordance
2 with the terms of the constitution and bylaws.

3 (e) The constitution, a bylaw, or an amendment to the
4 constitution or a bylaw is invalid without the department's
5 approval. (V.T.I.C. Art. 1.14-3, Secs. 1(5), 5(b), (c), (d), (e).)

6 Source Law

7 [Sec. 1]

8 [In this article:] . . .

9 (5) "Subscriber" means a person, firm,
10 corporation, or other organization designated by the
11 directors of the exchange as a subscriber on payment of
12 fees or dues required by the constitution and bylaws.

13 [Sec. 5]

14 (b) The exchange may amend its constitution and
15 bylaws in accordance with their terms and with the
16 approval of the board.

17 (c) The constitution and bylaws and amendments
18 to the constitution and bylaws are invalid without the
19 approval of the board.

20 (d) Notwithstanding any authority under this
21 article to adopt or amend the constitution and bylaws,
22 the constitution and bylaws must provide for:

23 (1) the election of nine directors, four
24 of whom represent the public interest and are not
25 members, subscribers, or agents of the exchange;

26 (2) the location of the principal offices
27 of the exchange and its members within this state for
28 the purpose of the transaction of the types of business
29 described in Section 3 of this article;

30 (3) the submission by the exchange, its
31 members, and applicants for membership in the exchange
32 of financial information required by regulations
33 promulgated by the board;

34 (4) the exchange to establish and maintain
35 a security fund in a form and amount specified by
36 regulations promulgated by the board;

37 (5) the voting power of members;

38 (6) the voting power and other rights
39 granted under the Texas Non-Profit Corporation Act
40 (Article 1396-1.01 et seq., Vernon's Texas Civil
41 Statutes) to participate in the conduct and management
42 of the affairs of the exchange by agents transacting
43 business on the exchange; and

44 (7) the rights and duties of members,
45 including the manner and form for conducting business,
46 financial stability, dues, membership fees, mandatory
47 arbitration, and other matters necessary or
48 appropriate to conduct business authorized by this
49 article.

50 (e) For the purposes of this section, a
51 principal office is an office at which officers and
52 personnel who are engaged in administration,
53 underwriting, claims adjustment, policyholders'
54 service, marketing, accounting, record-keeping, and
55 support services are located.

56 Revisor's Note

57 (1) Section 5(d)(6), V.T.I.C. Article 1.14-3,

1 refers to the Texas Non-Profit Corporation Act. That
2 Act was codified in various chapters of the Business
3 Organizations Code by Chapter 182, Acts of the 78th
4 Legislature, Regular Session, 2003. The Business
5 Organizations Code takes effect January 1, 2006, and
6 applies only to domestic business entities formed on
7 or after that date, to domestic business entities
8 formed before that date that elect to have that code
9 govern their operations, and to certain foreign
10 business entities. On January 1, 2010, the Texas
11 Non-Profit Corporation Act expires, and the Business
12 Organizations Code will apply to all business entities
13 without regard to date of formation or whether an
14 entity is a foreign or domestic business entity. The
15 revised law is drafted to reflect the applicability of
16 these statutes in accordance with their effective
17 dates or on election by a business entity.

18 (2) Section 5(d)(7), V.T.I.C. Article 1.14-3,
19 refers to the "manner and form" for conducting
20 business. The revised law omits "form" as included
21 within the meaning of "manner."

22 Revised Law

23 Sec. 2204.054. DIRECTORS. (a) The directors shall
24 operate and manage the exchange in accordance with rules adopted
25 under Section 2204.003.

26 (b) The directors shall be elected by the members and any
27 other person authorized by the exchange's constitution and bylaws
28 to vote in an election of directors.

29 (c) At least two-thirds of the directors must be citizens of
30 the United States. (V.T.I.C. Art. 1.14-3, Secs. 4 (part), 6.)

31 Source Law

32 Sec. 4. . . . the directors shall operate and
33 manage the exchange in accordance with those
34 regulations.

35 Sec. 6. (a) The directors for the exchange

1 shall be elected by the members of the exchange and by
2 any other persons authorized by the constitution and
3 bylaws of the exchange to vote for election of
4 directors.

5 (b) At least two-thirds of the directors must be
6 citizens of the United States.

7 [Sections 2204.055-2204.100 reserved for expansion]

8 SUBCHAPTER C. FINANCES

9 Revised Law

10 Sec. 2204.101. TAXES. (a) Except as provided by this
11 section and Chapters 251 and 261, the exchange is not subject to
12 state or local taxes that are measured by income, premiums, or gross
13 receipts.

14 (b) A direct premium written, procured, or received by a
15 member through the exchange on a risk located in this state is:

16 (1) considered written, procured, or received by the
17 exchange; and

18 (2) subject to the premium taxes imposed under
19 Subtitle B, Title 3.

20 (c) Premium taxes shall be reported, paid, and administered
21 as provided by Subtitle B, Title 3.

22 (d) The exchange and the members are considered insurers for
23 purposes of:

24 (1) Sections 201.052, 201.053, and 201.054;

25 (2) Chapters 4, 202, 203, 221, 222, 224, 227, 251, 257,
26 and 1109; and

27 (3) Section 171.0525, Tax Code. (V.T.I.C. Art.
28 1.14-3, Sec. 7.)

29 Source Law

30 Sec. 7. (a) Except as provided by this section
31 and Section 8 of this article, the exchange is not
32 subject to any state or local taxes measured by income,
33 premiums, or gross receipts.

34 (b) Direct premiums written, procured, or
35 received by any member through the exchange on risks
36 located in this state are deemed written, procured, or
37 received by the exchange, and those premiums are
38 subject to the premium taxes imposed under Chapter 4 of
39 this code. Those taxes shall be reported, paid, and
40 administered as provided by Chapter 4 of this code.

41 (c) For purposes of Chapter 4 of this code, the
42 exchange and its members are considered insurance
43 carriers.

1 Revisor's Note

2 (1) Section 7(a), V.T.I.C. Article 1.14-3,
3 refers to "Section 8 of this article." Section 8,
4 V.T.I.C. Article 1.14-3, was revised in 2003 in
5 Chapters 251 and 261 of this code, which took effect
6 April 1, 2005. The revised law provides the references
7 to those chapters.

8 (2) Section 7(b), V.T.I.C. Article 1.14-3,
9 refers to V.T.I.C. Chapter 4. That chapter is codified
10 in various titles in this code. The relevant
11 provisions of that chapter in the context of Section
12 7(b), revised as Sections 2204.101(b) and (c), were
13 revised in 2003 as Subtitle B, Title 3, of this code,
14 which took effect April 1, 2005.

15 Revised Law

16 Sec. 2204.102. INVESTMENTS IN MEMBER OR AGENT. (a) The
17 commissioner by rule may establish limitations on investments in a
18 member.

19 (b) An investment, directly or indirectly, in a member by an
20 agent transacting business on the exchange or in an agent
21 transacting business on the exchange by a member is limited in the
22 aggregate to:

23 (1) less than 20 percent of the total investment in the
24 member or agent; or

25 (2) a lesser amount provided by a rule adopted by the
26 commissioner. (V.T.I.C. Art. 1.14-3, Sec. 10.)

27 Source Law

28 Sec. 10. (a) The board by regulation may
29 establish limitations on investments in members of the
30 exchange.

31 (b) The investment in a member by agents
32 transacting business on the exchange and the
33 investment in an agent transacting business on the
34 exchange by a member, either directly or indirectly,
35 in each case is limited in the aggregate to less than
36 20 percent of the total investment in the member or
37 agent or to a lesser amount provided by board
38 regulation.

Revised Law

Sec. 2204.103. COVERAGE BY GUARANTY FUNDS. (a) The performance of a contractual obligation of the exchange or a member entered into under this chapter is not covered by an insurance guaranty fund provided by the laws of this state.

(b) This section does not apply to the security fund established under Section 2204.053(b)(4). (V.T.I.C. Art. 1.14-3, Sec. 12.)

Source Law

Sec. 12. Performance of the contractual obligations of the exchange or its members entered into under this article is not covered by any of the Texas insurance guaranty funds provided by the laws of this state. This section does not apply to the security fund provided by Subdivision (4) of Subsection (d) of Section 5 of this article.

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1 CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Revised Law

4 Sec. 2205.001. DEFINITIONS. In this chapter:

5 (1) "Board" means the board of trustees of the pool.

6 (2) "Child-care facility" has the meaning assigned by
7 Section 42.002, Human Resources Code.

8 (3) "Fund" means the Texas child-care facility
9 liability fund.

10 (4) "Pool" means the Texas Child-Care Facility
11 Liability Pool. (V.T.I.C. Art. 21.49-18, Sec. 1.)

12 Source Law

13 Art. 21.49-18

14 Sec. 1. In this article:

15 (1) "Board" means the board of trustees of
16 the pool.

17 (2) "Child-care facility" has the meaning
18 assigned to that term by Section 42.002, Human
19 Resources Code.

20 (3) "Fund" means the Texas child-care
21 facility liability fund.

22 (4) "Pool" means the Texas child-care
23 facility liability pool.

24 Revised Law

25 Sec. 2205.002. POOL NOT ENGAGED IN BUSINESS OF
26 INSURANCE. (a) Except as provided by this section and Section
27 2205.003(b), the pool is not engaged in the business of insurance
28 under this code or other state law, and this code and other state
29 insurance laws do not apply to the pool.

30 (b) The pool is subject to:

31 (1) this chapter;

32 (2) the requirements of this code or commissioner
33 rules relating to reporting liability claims information; and

34 (3) the requirements of Chapter 2251 and Article
35 5.13-2 relating to making, filing, and approving rates. (V.T.I.C.
36 Art. 21.49-18, Secs. 20(a), (b) (part).)

37 Source Law

38 Sec. 20. (a) Except as provided by Subsection
39 (c) of this section, the pool is not engaged in the
40 business of insurance under this code and other state

1 laws, and this code and other state insurance laws do
2 not apply to the pool.

3 (b) In addition to this article, the pool is
4 subject to:

5 (1) the requirements under this code and
6 State Board of Insurance rules relating to the
7 reporting of liability claims information;

8 (2) the requirements of Subchapter B,
9 Chapter 5 of this code relating to the making, filing,
10 and approval of rates; and

11 Revisor's Note

12 (1) Section 20(b)(1), V.T.I.C. Article
13 21.49-18, refers to the "State Board of Insurance."
14 Chapter 685, Acts of the 73rd Legislature, Regular
15 Session, 1993, abolished the State Board of Insurance
16 and transferred its functions to the commissioner of
17 insurance and the Texas Department of Insurance.
18 Throughout this chapter, references to the board have
19 been changed appropriately.

20 (2) Section 20(b)(2), V.T.I.C. Article
21 21.49-18, refers to the requirements of Subchapter B,
22 V.T.I.C. Chapter 5, relating to making, filing, and
23 approving rates. That subchapter has been revised in
24 part in various titles of this code. The relevant
25 provisions of Subchapter B, Chapter 5, that regulate
26 making, filing, and approving rates are in V.T.I.C.
27 Article 5.13-2, revised in part in Chapter 2251 of this
28 code. For that reason, the revised law substitutes a
29 reference to "Chapter 2251 and Article 5.13-2" for the
30 reference to "Subchapter B, Chapter 5."

31 Revised Law

32 Sec. 2205.003. DEPARTMENT AND COMMISSIONER SUPERVISION.

33 (a) The pool is subject to the department's continuing supervision
34 relating to the pool's solvency.

35 (b) The commissioner may set minimum requirements to ensure
36 the capability of the pool to satisfy the pool's obligations.
37 (V.T.I.C. Art. 21.49-18, Secs. 20(b) (part), (c).)

38 Source Law

39 (b) . . . the pool is subject to:

1 . . .
2 (3) continuing supervision by the State
3 Board of Insurance relating to the pool's solvency.

4 (c) The State Board of Insurance may set minimum
5 requirements to assure the capability of the pool to
6 satisfy its obligations.

7 [Sections 2205.004-2205.050 reserved for expansion]

8 SUBCHAPTER B. CREATION OF POOL

9 Revised Law

10 Sec. 2205.051. CREATION OF POOL. (a) The Texas Child-Care
11 Facility Liability Pool is created when the governing bodies of 10
12 or more child-care facilities agree in writing to participate in
13 the pool.

14 (b) The pool provides liability insurance coverage for
15 child-care facilities as provided by this chapter. (V.T.I.C. Art.
16 21.49-18, Secs. 2, 3(a) (part).)

17 Source Law

18 Sec. 2. The Texas Child-Care Facility Liability
19 Pool is created when the governing bodies of at least
20 10 child-care facilities have entered into a written
21 agreement for participation in the pool.

22 Sec. 3. (a) The pool shall insure a child-care
23 facility and [its officers and employees] against
24 liability [for acts and omissions under the laws of
25 this state in their official or employment capacities
26 and shall provide primary and excess liability
27 coverage to child-care facilities that qualify under
28 this article and under the pool's plan of operation].

29 Revised Law

30 Sec. 2205.052. PARTICIPATION IN POOL. A child-care
31 facility is entitled to coverage from the pool if the facility:

32 (1) submits a complete application;
33 (2) provides other information required by the pool;
34 (3) meets the underwriting standards established by
35 the pool; and

36 (4) pays the premiums required for the coverage.
37 (V.T.I.C. Art. 21.49-18, Sec. 4.)

38 Source Law

39 Sec. 4. A child-care facility is entitled to
40 coverage from the pool if it:

41 (1) submits a complete application;
42 (2) provides other information required by
43 the pool;
44 (3) meets the underwriting standards
45 established by the pool; and

1 (4) pays the premiums required for the
2 coverage.

3 Revised Law

4 Sec. 2205.053. SELECTION OF TEMPORARY BOARD. At the time
5 the governing bodies of the child-care facilities enter into the
6 written agreement under Section 2205.051, the governing bodies
7 shall select nine individuals to:

8 (1) serve as the temporary board; and

9 (2) draft the plan of operation for the pool.

10 (V.T.I.C. Art. 21.49-18, Sec. 5(a).)

11 Source Law

12 Sec. 5. (a) The governing bodies of the
13 child-care facilities that create the pool under
14 Section 2 of this article shall, when the agreement is
15 executed, appoint nine persons to serve as a temporary
16 board to draft the plan of operation of the pool.

17 [Sections 2205.054-2205.100 reserved for expansion]

18 SUBCHAPTER C. PLAN OF OPERATION

19 Revised Law

20 Sec. 2205.101. TIME FOR CREATION OF PLAN OF OPERATION. (a)
21 Not later than the 30th day after the date the last member of the
22 temporary board is selected, the temporary board shall meet to
23 prepare a plan of operation for the pool.

24 (b) The temporary board shall complete and adopt the plan of
25 operation not later than the 90th day after the date the last member
26 of the temporary board is selected. (V.T.I.C. Art. 21.49-18, Secs.
27 5(b), (d).)

28 Source Law

29 (b) Not later than the 30th day after the
30 selection of the last member of the temporary board,
31 the temporary board shall meet to prepare a plan of
32 operation for the pool.

33 (d) The temporary board shall complete and adopt
34 the plan of operation not later than the 90th day after
35 the date of the appointment of the last member of the
36 temporary board.

37 Revised Law

38 Sec. 2205.102. CONTENTS OF PLAN OF OPERATION. (a) Subject
39 to the requirements of this chapter, the plan of operation must
40 include:

1 (1) the organizational structure of the pool,
2 including:

3 (A) the method of selecting the board;

4 (B) the board's methods of procedure and
5 operation; and

6 (C) a summary of the methods for managing and
7 operating the pool;

8 (2) a description of the contributions and other
9 financial arrangements necessary to cover the initial expenses of
10 the pool and estimates, supported by statistical information, of
11 the amounts of those contributions or other financial arrangements;

12 (3) underwriting standards and procedures for
13 evaluating risks;

14 (4) a requirement that each participant in the pool
15 receive continuing training in the methods of controlling liability
16 losses;

17 (5) procedures for purchasing reinsurance;

18 (6) procedures and guidelines for:

19 (A) establishing premium rates for and maximum
20 limits of excess liability coverage available from the pool;

21 (B) negotiating and paying settlements,
22 defending claims, and paying judgments; and

23 (C) managing and investing the fund;

24 (7) procedures for:

25 (A) processing and paying claims; and

26 (B) defraying losses or expenses of the pool;

27 (8) guidelines for nonrenewal of coverage;

28 (9) the minimum capital and surplus to be maintained
29 by the pool; and

30 (10) the minimum standards for reserve requirements
31 for the pool.

32 (b) The plan of operation may include any matter relating to
33 the organization and operation of the pool or to the pool's
34 finances. (V.T.I.C. Art. 21.49-18, Sec. 5(c).)

Source Law

(c) The plan of operation may include any matters relating to the organization and operation of the pool and the pool's finances. The plan must include:

(1) the organizational structure of the pool, including the method of selection of the board, the methods of procedure and operation of the board, and a summary of the methods of management and operation of the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates supported by statistical information of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for the evaluation of risks;

(4) a requirement that each participant in the pool receive continuing training in methods of controlling liability losses;

(5) procedures for the purchase of reinsurance;

(6) procedures and guidelines for establishing premium rates and maximum limits of excess liability coverage available from the pool;

(7) procedures and guidelines for negotiation and payment of settlements, defense of claims, and payments of judgments;

(8) procedures for the processing and payment of claims;

(9) procedures for defraying any losses or expenses of the pool;

(10) procedures and guidelines for the management and investment of the fund;

(11) guidelines for nonrenewal of coverage;

(12) minimum limits of capital and surplus to be maintained by the pool; and

(13) minimum standards for reserve requirements for the pool.

Revisor's Note

Section 5(c), V.T.I.C. Article 21.49-18, specifies certain provisions that the Texas Child-Care Facility Liability Pool must include in the plan of operation. For the convenience of the reader, the revised law adds a reference to "the requirements of this chapter" because other provisions of V.T.I.C. Article 21.49-18, revised in this chapter, specify additional requirements applicable to the provisions of the plan of operation.

Revised Law

Sec. 2205.103. APPROVAL OF PLAN OF OPERATION. (a) On completion of the plan of operation, the temporary board shall

1 submit the plan to the department for examination, suggested
2 changes, and final approval.

3 (b) The department shall approve the plan of operation on
4 the determination that the pool is able and will continue to be able
5 to pay valid claims made against the pool. (V.T.I.C. Art. 21.49-18,
6 Sec. 5(e).)

7 Source Law

8 (e) On completion of the plan of operation, the
9 temporary board shall submit the plan to the State
10 Board of Insurance for examination, suggested changes,
11 and final approval. The State Board of Insurance shall
12 approve the plan of operation on the determination
13 that the pool has and will continue to have the ability
14 to pay valid claims made against it.

15 [Sections 2205.104-2205.150 reserved for expansion]

16 SUBCHAPTER D. BOARD OF TRUSTEES

17 Revised Law

18 Sec. 2205.151. GOVERNANCE OF POOL. (a) The pool is
19 governed by a board of trustees composed of nine members selected as
20 provided by the plan of operation.

21 (b) Not later than the 15th day after the date the
22 department approves the plan of operation, the initial regular
23 board must be selected as provided by the plan of operation. The
24 members of the initial regular board shall take office not later
25 than the 30th day after the date the plan of operation is adopted.
26 (V.T.I.C. Art. 21.49-18, Secs. 5(g), 6(a).)

27 Source Law

28 [Sec. 5]

29 (g) The first board shall be selected as
30 provided by the plan of operation not later than the
31 15th day after the date on which the plan of operation
32 is approved by the State Board of Insurance. The
33 members of the first board shall take office not later
34 than the 30th day after the date of the adoption of the
35 plan of operation.

36 Sec. 6. (a) The pool is governed by a
37 nine-member board of trustees. The trustees shall be
38 selected as provided by the plan of operation.

39 Revisor's Note

40 Section 6(a), V.T.I.C. Article 21.49-18, refers
41 to the selection of "trustees" for the Texas
42 Child-Care Facility Liability Pool. Throughout this

chapter, the revised law substitutes "members" for "trustees" for consistency and because "member" is more commonly used in this chapter to describe a person serving on the board of trustees.

Revised Law

Sec. 2205.152. TERMS; VACANCY. (a) Board members serve two-year terms. The terms expire as provided by the plan of operation.

(b) A vacancy on the board shall be filled as provided by the plan of operation. (V.T.I.C. Art. 21.49-18, Secs. 6(b), (c).)

Source Law

(b) Members of the board serve for two-year terms, with the terms expiring as provided by the plan of operation.

(c) A vacancy on the board shall be filled as provided by the plan of operation.

Revised Law

Sec. 2205.153. PERFORMANCE BOND REQUIRED. (a) Each board member shall execute a bond in the amount required by the plan of operation. The bond must be payable to the pool and conditioned on the faithful performance of the member's duties.

(b) The pool shall pay the cost of the bond executed under this section. (V.T.I.C. Art. 21.49-18, Sec. 6(d).)

Source Law

(d) Each member of the board shall execute a bond payable to the pool and conditioned on the faithful performance of the member's duties. The bond shall be executed in the amount required by the plan of operation. The pool shall pay the cost of the bond.

Revised Law

Sec. 2205.154. COMPENSATION. A board member is not entitled to compensation for the member's service on the board. (V.T.I.C. Art. 21.49-18, Sec. 6(e).)

Source Law

(e) A member of the board is not entitled to compensation for the member's service on the board.

Revised Law

Sec. 2205.155. OFFICERS; MEETINGS. (a) The board shall

1 elect from the board's membership a presiding officer and other
2 officers as provided by the plan of operation.

3 (b) Each officer serves a one-year term that expires as
4 provided by the plan of operation.

5 (c) The board shall meet at the call of the presiding
6 officer and at times established by the board's rules. (V.T.I.C.
7 Art. 21.49-18, Secs. 6(f), (g).)

8 Source Law

9 (f) The board shall elect a presiding officer
10 and other officers from its membership as provided by
11 the plan of operation. Each officer shall serve a
12 one-year term that expires as provided by the plan of
13 operation.

14 (g) The board shall meet at the call of the
15 presiding officer and at times established by its
16 rules.

17 Revised Law

18 Sec. 2205.156. GENERAL POWERS AND DUTIES OF BOARD. (a) The
19 board shall:

20 (1) approve contracts, other than liability insurance
21 contracts issued by the pool to child-care facilities; and

22 (2) adopt premium rate schedules and policy forms for
23 the pool.

24 (b) The board may:

25 (1) adopt rules as necessary for the operation of the
26 pool;

27 (2) delegate specific responsibilities to the pool
28 manager; and

29 (3) with the department's approval, amend the plan of
30 operation as necessary to ensure the orderly management and
31 operation of the pool. (V.T.I.C. Art. 21.49-18, Secs. 5(f) (part);
32 7(a) (part), (b).)

33 Source Law

34 [Sec. 5]

35 (f) The plan of operation may be amended by the
36 board with the approval of the State Board of
37 Insurance. . . .

38 Sec. 7. (a) The board shall:

39 (1) approve contracts, other than
40 liability insurance contracts issued to child-care

1 facilities by the pool;
2 (2) adopt policy forms and premium rate
3 schedules for the pool; and
4 (b) The board may:
5 (1) adopt rules as necessary for the
6 operation of the pool;
7 (2) delegate specific responsibilities to
8 the pool manager; and
9 (3) amend the plan of operation as
10 necessary to assure the orderly management and
11 operation of the pool.

12 Revisor's Note

13 Section 5(f), V.T.I.C. Article 21.49-18,
14 requires the amended plan of operation to require
15 participants in the Texas Child-Care Facility
16 Liability Pool to receive certain training. The
17 revised law omits this provision as duplicative of
18 Section 5(c)(4), V.T.I.C. Article 21.49-18, revised as
19 Section 2205.102(a)(4). The omitted law reads:

20 (f) . . . The amended plan must
21 maintain the requirement that each
22 participant receive continuing training in
23 methods of controlling liability losses.

24 Revised Law

25 Sec. 2205.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
26 LIABILITIES. A board member is not liable:

27 (1) with respect to a claim or judgment for which
28 coverage is provided by the pool; or

29 (2) for a claim or judgment against a child-care
30 facility covered by the pool. (V.T.I.C. Art. 21.49-18, Sec. 6(h).)

31 Source Law

32 (h) A member of the board is not liable with
33 respect to any claim of judgment for which coverage is
34 provided by the pool, or for a claim or judgment
35 against a child-care facility covered by the pool
36 against which a claim is made.

37 Revisor's Note

38 Section 6(h), V.T.I.C. Article 21.49-18,
39 provides that a member of the board of trustees of the
40 Texas Child-Care Facility Liability Pool is not liable
41 for a "claim of judgment for which coverage is provided
42 by the pool." The revised law substitutes "or" for
43 "of" in the quoted language because it is clear from

1 the context that "of" is a typographical error and that
2 the legislature intended to use the phrase "claim or
3 judgment."

4 [Sections 2205.158-2205.200 reserved for expansion]

5 SUBCHAPTER E. OPERATION OF POOL

6 Revised Law

7 Sec. 2205.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
8 pool shall:

9 (1) issue primary and excess liability coverage to
10 each child-care facility entitled to coverage under this chapter;

11 (2) collect premiums for coverage issued or renewed by
12 the pool;

13 (3) process and pay valid claims;

14 (4) maintain detailed information regarding the pool;

15 and

16 (5) establish a plan to conduct loss control training
17 or contract with an outside entity to establish continuing training
18 and inspections programs designed to reduce the potential liability
19 losses of pool participants.

20 (b) The pool may:

21 (1) enter into contracts;

22 (2) purchase reinsurance;

23 (3) cancel or refuse to renew coverage; and

24 (4) perform any other act necessary to implement this
25 chapter, the plan of operation, or a rule adopted by the board.

26 (V.T.I.C. Art. 21.49-18, Sec. 11.)

27 Source Law

28 Sec. 11. (a) The pool shall:

29 (1) issue primary and excess liability
30 coverage to each child-care facility entitled to
31 coverage under this article;

32 (2) collect premiums for coverage issued
33 or renewed by the pool;

34 (3) process and pay valid claims;

35 (4) maintain detailed information
36 regarding the pool; and

37 (5) establish a plan to conduct loss
38 control training or contract with an outside entity to
39 establish continuing training and inspections
40 programs designed to reduce the potential liability

1 losses of participants in the pool.

2 (b) The pool may:

3 (1) contract;

4 (2) purchase reinsurance;

5 (3) cancel or refuse to renew coverage;

6 and

7 (4) perform other acts necessary to
8 implement this article, the plan of operation, and the
9 rules adopted by the board.

10 Revised Law

11 Sec. 2205.202. POOL MANAGER; PERFORMANCE BOND
12 REQUIRED. (a) The board shall appoint a pool manager who serves at
13 the pleasure of the board, and the board shall supervise the pool
14 manager's activities.

15 (b) The pool manager shall execute a bond in the amount
16 determined by the board. The bond must be payable to the pool and
17 conditioned on the faithful performance of the pool manager's
18 duties. (V.T.I.C. Art. 21.49-18, Secs. 7(a) (part); 8(a) (part),
19 (b).)

20 Source Law

21 Sec. 7. (a) The board shall:

22 . . .
23 (3) supervise the activities of the pool
24 manager.

25 Sec. 8. (a) The board shall appoint a pool
26 manager who serves at the pleasure of the board. . . .

27 (b) The pool manager shall execute a bond in the
28 amount determined by the board, payable to the pool,
29 and conditioned on the faithful performance of the
30 manager's duties.

31 Revised Law

32 Sec. 2205.203. GENERAL POWERS AND DUTIES OF POOL MANAGER.

33 (a) The pool manager shall direct the general operation of the pool
34 and perform other duties as directed by the board.

35 (b) The pool manager shall:

36 (1) receive and approve applications for liability
37 coverage from the pool;

38 (2) negotiate contracts for the pool; and

39 (3) prepare proposed policy forms for board approval.

40 (c) The pool manager may refuse to renew the coverage of a
41 child-care facility insured by the pool that fails to meet the
42 guidelines included in the plan of operation. (V.T.I.C. Art.

21.49-18, Secs. 8(a) (part), (c) (part), (d).)

Source Law

Sec. 8. (a) [The board shall appoint a pool manager who serves at the pleasure of the board.] The pool manager shall direct the general operation of the pool and shall perform other duties as directed by the board.

(c) The pool manager shall:

(1) receive and approve applications received from child-care facilities for liability coverage from the pool;

(2) negotiate contracts for the pool;

(3) prepare . . . proposed policy forms for board approval; and

(d) The pool manager may refuse to renew the coverage of any child-care facility insured by the pool that fails to meet the guidelines provided by the plan of operation.

Revised Law

Sec. 2205.204. PERSONNEL. (a) The pool manager may employ or contract with persons as necessary to assist the board and the pool manager in implementing the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

(V.T.I.C. Art. 21.49-18, Secs. 9(a), (b).)

Source Law

Sec. 9. (a) The pool manager may employ or contract with persons as necessary to assist the board and pool manager in implementing the powers and duties of the pool.

(b) The board must approve compensation paid to pool employees and contracts made with other persons.

Revised Law

Sec. 2205.205. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2205.204 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool. (V.T.I.C. Art. 21.49-18, Sec. 9(c).)

Source Law

(c) The board may require any employee or person with whom it contracts under this section to execute a bond in an amount determined by the board, payable to the board, and conditioned on the faithful performance

1 of the employee's or person's duties to the pool.

2 Revised Law

3 Sec. 2205.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
4 CERTAIN LIABILITIES. An employee or a person with whom the pool
5 manager contracts under Section 2205.204 is not liable with respect
6 to a claim or judgment against a child-care facility covered by the
7 pool. (V.T.I.C. Art. 21.49-18, Sec. 9(d).)

8 Source Law

9 (d) An employee or person with whom the pool has
10 contracted is not liable with respect to any claim or
11 judgment against a child-care facility covered by the
12 pool against whom a claim is made.

13 Revised Law

14 Sec. 2205.207. OFFICE; RECORDS. (a) The pool shall
15 maintain the pool's principal office in Austin, Texas.

16 (b) Records and other information relating to the operation
17 of the pool must be maintained in the pool's principal office.
18 (V.T.I.C. Art. 21.49-18, Sec. 10.)

19 Source Law

20 Sec. 10. (a) The pool shall maintain its
21 principal office in Austin, Texas.

22 (b) The records and other information relating
23 to the operation of the pool shall be maintained in the
24 pool's principal office.

25 Revised Law

26 Sec. 2205.208. ANNUAL AUDIT. The board shall require an
27 annual audit of the pool's capital, surplus, and reserves. The
28 audit must be conducted by an actuary who is a member of the
29 American Academy of Actuaries or a similar national organization of
30 actuaries recognized by the board. (V.T.I.C. Art. 21.49-18, Sec.
31 12(h).)

32 Source Law

33 (h) The board shall require an annual audit of
34 the capital, surplus, and reserves of the pool to be
35 conducted by an actuary who is a member of the American
36 Academy of Actuaries or a similar national
37 organization of actuaries recognized by the board.

38 [Sections 2205.209-2205.250 reserved for expansion]

1 SUBCHAPTER F. TEXAS CHILD-CARE FACILITY LIABILITY FUND

2 Revised Law

3 Sec. 2205.251. FUND CREATION; MANAGEMENT. (a) The Texas
4 child-care facility liability fund is established on the creation
5 of the pool.

6 (b) The fund is composed of:

7 (1) premiums paid by child-care facilities for
8 coverage provided by the pool;

9 (2) contributions and other money received by the pool
10 to cover the initial expenses of the fund;

11 (3) investments of the fund and money earned from
12 those investments; and

13 (4) any other money received by the pool.

14 (c) The pool manager, under the general supervision of the
15 board, shall manage and invest the money in the fund in the manner
16 provided by the plan of operation.

17 (d) Money earned by the investment of money in the fund must
18 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
19 21.49-18, Secs. 12(a), (b), (c); 13.)

20 Source Law

21 Sec. 12. (a) The Texas child-care facility
22 liability fund is created on the creation of the pool.

23 (b) The fund is composed of:

24 (1) premiums paid by child-care facilities
25 for coverage by the pool;

26 (2) contributions and other money received
27 by the pool to cover the initial expenses of the fund;

28 (3) investments and money earned from
29 investments of the fund; and

30 (4) any other money received by the pool.

31 (c) The pool manager shall manage the fund under
32 the general supervision of the board.

33 Sec. 13. (a) The pool manager shall manage and
34 invest the fund in the manner provided by the plan of
35 operation.

36 (b) Money earned by the investment of the fund
37 shall be deposited in the fund or reinvested for the
38 fund.

39 Revised Law

40 Sec. 2205.252. CONTRIBUTIONS. The board shall determine
41 the amount of contributions necessary to meet the initial expenses
42 of the pool. The board shall make this determination based on the

1 information provided by the plan of operation. (V.T.I.C. Art.
2 21.49-18, Sec. 14.)

3 Source Law

4 Sec. 14. From information provided in the plan
5 of operation, the board shall determine the amount of
6 contributions necessary to meet the initial expenses
7 of the pool.

8 Revised Law

9 Sec. 2205.253. USES OF FUND. (a) Administrative expenses
10 of the pool may be paid from the fund. Payments for administrative
11 expenses during a fiscal year may not exceed 10 percent of the total
12 amount of the money in the fund during that fiscal year.

13 (b) Money in the fund may not be used to pay:

14 (1) punitive damages; or

15 (2) a fine or penalty imposed for a violation of:

16 (A) a statute;

17 (B) a rule of a state agency; or

18 (C) an ordinance or order of a local government.

19 (c) A claim or judgment may be paid from the fund under
20 excess liability insurance coverage only if all benefits payable
21 under any other underlying liability insurance policy covering that
22 claim or judgment are exhausted. (V.T.I.C. Art. 21.49-18, Secs.
23 12(d), (e), (f).)

24 Source Law

25 (d) Administrative expenses of the pool may be
26 paid from the fund. Payments for administrative
27 expenses in any fiscal year may not exceed 10 percent
28 of the total amount of money in the fund during that
29 fiscal year.

30 (e) The fund may not be used to pay punitive
31 damages, fines or penalties for violation of a civil or
32 criminal statute, or fines or penalties imposed for
33 the violation of a rule of a state agency or an
34 ordinance or order of a local government.

35 (f) A claim or judgment may not be paid from the
36 fund under excess liability insurance coverage unless
37 and until all benefits payable under any other
38 underlying liability insurance policy covering that
39 claim or judgment are exhausted.

40 Revisor's Note

41 Section 12(e), V.T.I.C. Article 21.49-18, refers
42 to "punitive damages, fines or penalties for violation

1 of a civil or criminal statute." The revised law omits
2 the reference to "civil or criminal" as unnecessary
3 because all statutes are either "civil" or "criminal."

4 Revised Law

5 Sec. 2205.254. DEPOSITORY BANK. (a) The board may select
6 one or more banks to serve as a depository for the fund.

7 (b) A depository bank must provide security before money in
8 the fund may be deposited in the bank in an amount that exceeds the
9 maximum amount secured by the Federal Deposit Insurance
10 Corporation. The security must be in an amount sufficient to secure
11 the excess amount of the deposit. (V.T.I.C. Art. 21.49-18, Sec.
12 12(g).)

13 Source Law

14 (g) The board may select one or more banks to
15 serve as depository for the fund. Before the deposit
16 of fund money in a depository bank in an amount that
17 exceeds the maximum secured by the Federal Deposit
18 Insurance Corporation, the bank must provide security
19 in an amount sufficient to secure from loss the fund
20 money that exceeds the amount secured by the Federal
21 Deposit Insurance Corporation.

22 [Sections 2205.255-2205.300 reserved for expansion]

23 SUBCHAPTER G. POOL COVERAGE

24 Revised Law

25 Sec. 2205.301. SCOPE OF COVERAGE. (a) The pool shall
26 insure a child-care facility and the facility's officers and
27 employees against liability for acts and omissions under the laws
28 of this state by the officers and employees in their official or
29 employment capacities.

30 (b) The pool shall provide to a child-care facility that
31 qualifies under this chapter and the plan of operation:

32 (1) primary liability insurance coverage in an amount
33 not to exceed \$300,000; and

34 (2) excess liability insurance coverage in an amount
35 that the board determines is actuarially sound.

36 (c) The pool may participate in evaluating, settling, and
37 defending a claim against a child-care facility insured by the

1 pool.

2 (d) The pool is liable in an amount not to exceed the limit
3 of coverage provided to a child-care facility on a claim made
4 against the facility. (V.T.I.C. Art. 21.49-18, Sec. 3.)

5 Source Law

6 Sec. 3. (a) The pool shall insure a child-care
7 facility and its officers and employees against
8 liability for acts and omissions under the laws of this
9 state in their official or employment capacities and
10 shall provide primary and excess liability coverage to
11 child-care facilities that qualify under this article
12 and under the pool's plan of operation.

13 (b) The pool may provide primary liability
14 coverage to a child-care facility in an amount not to
15 exceed \$300,000. The pool may provide excess liability
16 coverage to a child-care facility only in an amount
17 determined by the board to be actuarially sound. The
18 pool is liable on any claim only to the limit provided
19 by the coverage of the child-care facility against
20 which the claim is made.

21 (c) The pool may participate in the evaluation,
22 settlement, and defense of a claim against a
23 child-care facility insured by the pool.

24 Revised Law

25 Sec. 2205.302. BASIS OF COVERAGE. The pool may provide
26 liability insurance coverage on a claims-made basis or an
27 occurrence basis. (V.T.I.C. Art. 21.49-18, Sec. 17.)

28 Source Law

29 Sec. 17. Liability insurance coverage provided
30 by the pool may be provided on a claims-made basis or
31 on an occurrence basis.

32 Revised Law

33 Sec. 2205.303. RATES AND LIMITS OF COVERAGE. (a) To
34 ensure that the pool is actuarially sound, the board shall:

35 (1) set the premium rates charged; and

36 (2) determine the maximum limits of coverage provided.

37 (b) The pool manager, for the board's consideration, shall:

38 (1) collect and compile statistical information
39 relating to the liability coverage provided by the pool, including
40 relevant loss, expense, and premium information, and other
41 necessary information;

42 (2) prepare the proposed premium rate schedules for
43 the approval of the board; and

1 (3) prepare the maximum limits of coverage.

2 (c) The board shall periodically reexamine the rate
3 schedules and the maximum limits of coverage.

4 (d) The pool manager shall make available to the public the
5 information described by Subsection (b)(1). (V.T.I.C. Art.
6 21.49-18, Secs. 8(c) (part), 15.)

7 Source Law

8 (c) The pool manager shall:

9 (3) prepare premium rate schedules and
10 . . . for board approval; and

11 (4) collect and compile statistical
12 information relating to the liability coverage
13 provided by the pool, including relevant loss,
14 expense, and premium information, and make the
15 information available to the board and the public.
16

17 Sec. 15. (a) The board shall determine the
18 premium rates charged and the maximum limits of
19 coverages provided to assure that the pool is
20 actuarially sound.

21 (b) The pool manager shall prepare statistical
22 information and other necessary information, proposed
23 rate schedules, and maximum limits of coverage for
24 consideration by the board.

25 (c) The board shall reexamine periodically the
26 rate schedules and the maximum limits of coverage.

27 Revised Law

28 Sec. 2205.304. COVERAGE PERIOD. A child-care facility
29 that accepts coverage provided by the pool shall maintain that
30 coverage for at least 24 consecutive months following the date the
31 pool issued the coverage. (V.T.I.C. Art. 21.49-18, Sec. 16(a).)

32 Source Law

33 Sec. 16. (a) On accepting coverage from the
34 pool, a child-care facility shall maintain the
35 coverage for not less than 24 consecutive months after
36 the date that the coverage is issued.

37 Revised Law

38 Sec. 2205.305. NONRENEWAL OF COVERAGE. (a) Except as
39 provided by Subsection (b), the pool may refuse to renew the
40 coverage of a child-care facility that fails to comply with the
41 pool's underwriting standards.

42 (b) The pool may not refuse to renew the coverage of a
43 child-care facility during the first 24 months following the date
44 the facility is first provided coverage by the pool if the facility

1 maintains the underwriting standards established by the plan of
2 operation. (V.T.I.C. Art. 21.49-18, Sec. 18.)

3 Source Law

4 Sec. 18. (a) Except as provided by Subsection
5 (b) of this section, the pool may refuse to renew the
6 coverage of any child-care facility that fails to
7 comply with the pool's underwriting standards.

8 (b) If a participant in the pool maintains
9 underwriting standards established by the plan of
10 operation, the pool may not refuse to renew the
11 coverage of a child-care facility for the first 24
12 months after the date on which the facility was first
13 insured by the pool.

14 Revisor's Note

15 Section 18(b), V.T.I.C. Article 21.49-18,
16 prohibits the Texas Child-Care Facility Liability Pool
17 from refusing to renew the coverage of a child-care
18 facility for a certain period if a "participant in the
19 pool" meets certain standards. For consistency, the
20 revised law substitutes "child-care facility" for the
21 quoted language.

22 Revised Law

23 Sec. 2205.306. SUBSEQUENT COVERAGE. A child-care facility
24 that voluntarily discontinues coverage provided by the pool is not
25 eligible to subsequently obtain coverage from the pool for at least
26 12 months following the date the coverage is discontinued.
27 (V.T.I.C. Art. 21.49-18, Sec. 16(b).)

28 Source Law

29 (b) A child-care facility that voluntarily
30 discontinues coverage in the pool is ineligible to
31 obtain coverage from the pool for at least 12 months
32 after the date on which the coverage was discontinued.

33 Revised Law

34 Sec. 2205.307. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If
35 money in the fund would be exhausted by the payment of all final and
36 settled claims and final judgments during a fiscal year, the pool
37 shall prorate the amount paid to each person having the claim or
38 judgment.

39 (b) If the amount paid by the pool is prorated under this
40 section, each person described by Subsection (a) shall receive an

amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The pool shall pay in the next fiscal year the remaining amount that is due and unpaid to a person who receives a prorated payment under this section. (V.T.I.C. Art. 21.49-18, Sec. 19.)

Source Law

Sec. 19. (a) If money in the fund will be exhausted by payment of all final and settled claims and final judgments during a fiscal year, the amount paid by the pool to each person who has a claim or judgment shall be prorated, with each person receiving an amount equal to the percentage that the amount owed to that person bears to the total amount owed, outstanding, and payable by the pool.
(b) The balance of the amount due and unpaid to a person who receives prorated payment under Subsection (a) of this section shall be paid in the subsequent fiscal year.

CHAPTER 2206. RISK MANAGEMENT POOLS FOR CERTAIN EDUCATIONAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITIONS 1300

Sec. 2206.002. APPLICABILITY OF OTHER LAWS 1301

[Sections 2206.003-2206.050 reserved for expansion]

SUBCHAPTER B. SCHOOL DISTRICT RISK MANAGEMENT POOL

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SUBCHAPTER C. JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL

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[Sections 2206.104-2206.150 reserved for expansion]

1 SUBCHAPTER D. PLAN OF OPERATION

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3 Sec. 2206.152. CONTENTS OF PLAN OF OPERATION 1309

4 [Sections 2206.153-2206.200 reserved for expansion]

5 SUBCHAPTER E. BOARD OF TRUSTEES

6 Sec. 2206.201. BOARD OF TRUSTEES 1311

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8 Sec. 2206.203. PERSONNEL; CONTRACTS FOR SERVICES 1312

9 Sec. 2206.204. PERFORMANCE BOND REQUIRED 1312

10 Sec. 2206.205. IMMUNITY FROM CERTAIN LIABILITIES 1312

11 [Sections 2206.206-2206.250 reserved for expansion]

12 SUBCHAPTER F. RISK MANAGEMENT FUND

13 Sec. 2206.251. FUND CREATION; MANAGEMENT 1313

14 Sec. 2206.252. USES OF FUND 1313

15 [Sections 2206.253-2206.300 reserved for expansion]

16 SUBCHAPTER G. PREMIUM RATES AND COVERAGE; REINSURANCE

17 Sec. 2206.301. PREMIUM RATES AND COVERAGE LIMITS 1314

18 Sec. 2206.302. GUARANTEED ISSUANCE OF INITIAL

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20 Sec. 2206.303. REINSURANCE 1316

21 CHAPTER 2206. RISK MANAGEMENT POOLS FOR CERTAIN EDUCATIONAL

22 ENTITIES

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Revised Law

25 Sec. 2206.001. DEFINITIONS. In this chapter:

26 (1) "Board" means the board of trustees of a pool.

27 (2) "Fund" means a risk management fund.

28 (3) "Junior college district" means a junior college

29 district created under the laws of this state.

30 (4) "Pool" means a risk management pool created under

31 this chapter.

32 (5) "School district" means a public school district

33 created under the laws of this state. (V.T.I.C. Art. 21.49-17,

34 Secs. 1(1), (2), (4), (5), (6).)

Source Law

Art. 21.49-17

Sec. 1. In this article:

(1) "School district" means a public school district created under the laws of this state.

(2) "Junior college district" means a junior college district organized under the laws of this state.

(4) "Pool" means a risk management pool created under this article.

(5) "Fund" means a risk management fund.

(6) "Board" means the board of trustees of a pool.

Revisor's Note

(1) Section 1(2), V.T.I.C. Article 21.49-17, refers to a junior college district "organized under the laws of this state." The revised law substitutes "created" for "organized" for consistency with the definition of "school district" in Section 1(1), V.T.I.C. Article 21.49-17, revised in this section, and because, in context, the words have the same meaning.

(2) Sections 1(3) and (7), V.T.I.C. Article 21.49-17, define "entity" and "plan," respectively. The revised law omits those definitions and, throughout this chapter, substitutes the applicable substance of those definitions for the terms "entity" and "plan." The omitted law reads:

(3) "Entity" means a school district or junior college district.

(7) "Plan" means a pool's plan of operation.

Revised Law

Sec. 2206.002. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), a pool is not considered insurance under this code or other laws of this state, and the department does not have jurisdiction over the pool.

(b) The pool:

(1) shall collect the necessary information and file with the department the reports required by Subchapter D, Chapter

1 38; and

2 (2) is subject to Chapter 541 and Section 543.001.
3 (V.T.I.C. Art. 21.49-17, Sec. 15.)

4 Source Law

5 Sec. 15. (a) Except as provided by Subsection
6 (b) of this section, a pool provided by this article is
7 not considered insurance under this code and other
8 laws of this state and the State Board of Insurance has
9 no jurisdiction over the pool.

10 (b) The pool shall collect the necessary data,
11 information, and statements and shall file with the
12 State Board of Insurance the reports and statements
13 required by Articles 1.24A and 1.24B and is subject to
14 21.21 of this code.

15 Revisor's Note

16 (1) Section 15, V.T.I.C. Article 21.49-17,
17 refers to the State Board of Insurance. Chapter 685,
18 Acts of the 73rd Legislature, Regular Session, 1993,
19 abolished the State Board of Insurance and transferred
20 its functions to the commissioner of insurance and the
21 Texas Department of Insurance. The references to the
22 State Board of Insurance have been changed
23 appropriately.

24 (2) Section 15(b), V.T.I.C. Article 21.49-17,
25 requires a risk management pool to collect "data,
26 information, and statements" and file "reports and
27 statements" required by V.T.I.C. Articles 1.24A and
28 1.24B. The revised law omits the reference to "data"
29 because "data" is included within the meaning of
30 "information." The revised law also omits the
31 references to "statements" because V.T.I.C. Article
32 1.24B, codified as Subchapter D, Chapter 38, of this
33 code, does not require that statements be collected or
34 filed, and V.T.I.C. Article 1.24A is repealed (see
35 Revisor's Note (3) to this section).

36 (3) Section 15(b), V.T.I.C. Article 21.49-17,
37 refers to V.T.I.C. Article 1.24A. The revised law
38 omits the reference to Article 1.24A because that

1 article was repealed by Section 8.12, Chapter 685,
2 Acts of the 73rd Legislature, Regular Session, 1993.

3 [Sections 2206.003-2206.050 reserved for expansion]

4 SUBCHAPTER B. SCHOOL DISTRICT RISK MANAGEMENT POOL

5 Revised Law

6 Sec. 2206.051. CREATION OF SCHOOL DISTRICT RISK MANAGEMENT
7 POOL. (a) The boards of trustees of five or more school districts
8 may create the school district risk management pool by adopting a
9 resolution to create the pool.

10 (b) The school district risk management pool insures each
11 school district that purchases coverage in the pool against
12 liability under law for the district's acts and omissions.

13 (c) Not more than one school district risk management pool
14 may be created under this subchapter. (V.T.I.C. Art. 21.49-17,
15 Secs. 2(b) (part), (c) (part), (e) (part).)

16 Source Law

17 (b) On the adoption of a resolution by not fewer
18 than five boards of trustees of school districts to
19 create the school district risk management pool or
20 . . . the risk management pool for the type of
21 governmental entity is created.

22 (c) The risk management pool for school
23 districts is created to insure each school district
24 that purchases coverage in the pool against liability
25 for its acts and omissions under the law. . . .

26 (e) There may not be more than one school
27 district risk management pool and

28 Revised Law

29 Sec. 2206.052. PARTICIPATION IN POOL. (a) A school
30 district that meets the criteria established by the school district
31 risk management pool in the pool's plan of operation may:

32 (1) purchase coverage from the pool; and

33 (2) use district money to pay the fees, contributions,
34 or premiums required to participate in the pool and obtain the
35 coverage.

36 (b) A junior college district may not participate in the
37 school district risk management pool. (V.T.I.C. Art. 21.49-17,
38 Secs. 2(d) (part), 3 (part).)

Source Law

[Sec. 2]

(d) . . . junior college districts may not participate in the school district risk management pool.

Sec. 3. A school district or . . . in this state that meets the criteria established by its respective pool in that pool's plan may purchase from that pool coverage insuring the district against liability for its acts or omissions under the law and may use funds of the district to pay any fees, contributions, or premiums required to be a part of the pool and to obtain that coverage.

Revisor's Note

(1) Section 3, V.T.I.C. Article 21.49-17, refers to a school district "in this state." The revised law omits "in this state" as unnecessary because the phrase is implied by the definition of "school district" under Section 1(1), V.T.I.C. Article 21.49-17, revised in this chapter as Section 2206.001(5), which provides that "school district" means "a public school district created under the laws of this state."

(2) Section 3, V.T.I.C. Article 21.49-17, states that a school district may purchase coverage "insuring the district against liability for its acts or omissions under the law." The revised law omits the quoted language as duplicative of Section 2(c), V.T.I.C. Article 21.49-17, revised in this chapter as Section 2206.051(b), which provides that the risk management pool insures each participating school district against liability for the district's acts and omissions under the law.

(3) Section 3, V.T.I.C. Article 21.49-17, states that a school district may use district "funds" for certain purposes. Throughout this chapter, the revised law substitutes "money" for "funds" because, in context, the terms are synonymous and the former is more commonly used.

1 SUBCHAPTER C. JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL

2 Revised Law

3 Sec. 2206.101. CREATION OF JUNIOR COLLEGE DISTRICT RISK
4 MANAGEMENT POOL. (a) The board of trustees of five or more junior
5 college districts may create the junior college district risk
6 management pool by adopting a resolution to create the pool.

7 (b) The junior college district risk management pool
8 insures each junior college district that purchases coverage in the
9 pool against liability under law for the district's acts and
10 omissions.

11 (c) Not more than one junior college district risk
12 management pool may be created under this subchapter. (V.T.I.C.
13 Art. 21.49-17, Secs. 2(b) (part), (c) (part), (e) (part).)

14 Source Law

15 (b) On the adoption of a resolution by . . . not
16 fewer than five boards of trustees of junior college
17 districts to create the junior college risk management
18 pool, the risk management pool for the type of
19 governmental entity is created.

20 (c) . . . The risk management pool for junior
21 college districts is created to insure each junior
22 college district that purchases coverage in the pool
23 against liability for its acts and omissions under the
24 law.

25 (e) There may . . . be . . . not more than one
26 junior college district risk management pool created
27 under this article.

28 Revised Law

29 Sec. 2206.102. PARTICIPATION IN POOL. (a) A junior
30 college district that meets the criteria established by the junior
31 college district risk management pool in the pool's plan of
32 operation may:

33 (1) purchase coverage from the pool; and

34 (2) use district money to pay the fees, contributions,
35 or premiums required to participate in the pool and obtain the
36 coverage.

37 (b) A school district may not participate in the junior
38 college district risk management pool. (V.T.I.C. Art. 21.49-17,
39 Secs. 2(d) (part), 3 (part).)

Source Law

[Sec. 2]

(d) School districts may not participate in the junior college district risk management pool and

Sec. 3. . . . a junior college district in this state that meets the criteria established by its respective pool in that pool's plan may purchase from that pool coverage insuring the district against liability for its acts or omissions under the law and may use funds of the district to pay any fees, contributions, or premiums required to be a part of the pool and to obtain that coverage.

Revisor's Note

(1) Section 3, V.T.I.C. Article 21.49-17, refers to a junior college district "in this state." The revised law omits "in this state" as unnecessary because the phrase is implied by the definition of "junior college district" under Section 1(2), V.T.I.C. Article 21.49-17, revised in this chapter as Section 2206.001(3), which provides that "junior college district" means "a junior college district organized under the laws of this state."

(2) Section 3, V.T.I.C. Article 21.49-17, states that a junior college district may purchase coverage "insuring the district against liability for its acts or omissions under the law." The revised law omits the quoted language as duplicative of Section 2(c), V.T.I.C. Article 21.49-17, revised in this chapter as Section 2206.101(b), which provides that the risk management pool insures each participating junior college district against liability for the district's acts and omissions under the law.

Revised Law

Sec. 2206.103. ORGANIZATIONAL MEETING; SELECTION OF TEMPORARY BOARD. (a) On authorization to create the junior college district risk management pool as provided by Section 2206.101, the board of trustees of each junior college district adopting a resolution to create the pool shall select one

1 representative to meet with representatives of the other junior
2 college districts adopting the resolution.

3 (b) At the meeting, the representatives shall:

4 (1) adopt guidelines for developing an organizational
5 plan for the pool; and

6 (2) select nine individuals to serve as a temporary
7 board for the pool. (V.T.I.C. Art. 21.49-17, Secs. 4(a) (part),
8 (b).)

9 Source Law

10 Sec. 4. (a) On authorization to create a pool
11 as provided by Section 2 of this article, each board
12 adopting a resolution to create the pool shall select
13 one representative to meet with representatives of the
14 other . . . junior college districts adopting the
15 resolution.

16 (b) At the meeting, the representatives shall
17 adopt guidelines for developing an organizational plan
18 for the pool and shall select nine persons to serve as
19 a temporary board of trustees.

20 Revisor's Note

21 Section 4(a), V.T.I.C. Article 21.49-17, refers
22 to each "board" adopting a resolution to create the
23 junior college district risk management pool. The
24 revised law substitutes "board of trustees of each
25 junior college district" for "board" to clarify that,
26 in this section, the reference to "board" is not a
27 reference to the board of trustees of a pool, as the
28 term "board" is defined by Section 1(6), V.T.I.C.
29 Article 21.49-17, revised in this chapter as Section
30 2206.001(1).

31 [Sections 2206.104-2206.150 reserved for expansion]

32 SUBCHAPTER D. PLAN OF OPERATION

33 Revised Law

34 Sec. 2206.151. TIME FOR CREATION OF PLAN OF
35 OPERATION. (a) Not later than the 30th day after the date the
36 temporary board of a pool is selected, the temporary board shall
37 meet and begin preparing a detailed plan of operation for the pool.

38 (b) The temporary board shall complete the plan of operation

1 not later than the 90th day after the date the temporary board is
2 selected. (V.T.I.C. Art. 21.49-17, Secs. 5(a), (c).)

3 Source Law

4 Sec. 5. (a) Within 30 days after selection,
5 the members of the temporary board shall meet and begin
6 to prepare a detailed plan of operation for the pool.

7 (c) The temporary board shall complete the plan
8 within 90 days after the date of the appointment of the
9 temporary board.

10 Revised Law

11 Sec. 2206.152. CONTENTS OF PLAN OF OPERATION. (a) Subject
12 to the requirements of this chapter, a pool's plan of operation must
13 include:

14 (1) the organizational structure of the pool,
15 including:

16 (A) the number of regular board members;

17 (B) the method of selecting the board members;

18 (C) the board's method of procedure and
19 operation; and

20 (D) a summary of the method for managing and
21 operating the pool;

22 (2) a description of the fees, contributions, or
23 financial arrangements necessary to cover the initial expenses of
24 the pool and estimates, supported by statistical data, of the
25 amounts of those fees, contributions, or other financial
26 arrangements;

27 (3) underwriting guidelines and procedures for
28 evaluating risks;

29 (4) procedures for purchasing reinsurance;

30 (5) methods, procedures, and guidelines for
31 establishing:

32 (A) premium rates for pool coverage; and

33 (B) pool coverage limits;

34 (6) procedures for processing and paying claims;

35 (7) methods and procedures for defraying losses and
36 expenses of the pool;

1 (8) methods, procedures, and guidelines for managing
2 and investing the money in the fund created for the pool;

3 (9) minimum capital and surplus to be maintained by
4 the pool; and

5 (10) minimum standards for reserve requirements for
6 the pool.

7 (b) The plan of operation may include any matter relating to
8 the organization and operation of the pool and the pool's finances.
9 (V.T.I.C. Art. 21.49-17, Sec. 5(b).)

10 Source Law

11 (b) The plan may include any matters relating to
12 the organization and operation of the pool and its
13 finances and shall include:

14 (1) the organizational structure of the
15 pool, including the number, method of selection, and
16 method of procedure and operation of the regular board
17 for the pool and a summary of the method for managing
18 and operating the pool;

19 (2) a description of the fees,
20 contributions, or financial arrangements necessary to
21 cover the initial expenses of the pool and estimates
22 supported by statistical data of the amounts of those
23 fees, contributions, or other financial arrangements;

24 (3) underwriting guidelines and
25 procedures for the evaluation of risks;

26 (4) procedures for purchase of
27 reinsurance;

28 (5) methods, procedures, and guidelines
29 for establishing rates for premiums for and limits of
30 coverage in the pool;

31 (6) procedures for the processing and
32 payment of claims;

33 (7) methods and procedures for defraying
34 losses and expenses of the pool;

35 (8) methods, procedures, and guidelines
36 for the management and investment of the fund;

37 (9) minimum limits of capital and surplus
38 to be maintained by the pool; and

39 (10) minimum standards for reserve
40 requirements for the pool.

41 Revisor's Note

42 Section 5(b), V.T.I.C. Article 21.49-17,
43 specifies certain provisions that a risk management
44 pool must include in the plan of operation. For the
45 convenience of the reader, the revised law adds a
46 reference to "the requirements of this chapter"
47 because other provisions of V.T.I.C. Article 21.49-17,
48 revised in this chapter, specify additional

1 requirements applicable to the provisions of the plan
2 of operation.

3 [Sections 2206.153-2206.200 reserved for expansion]

4 SUBCHAPTER E. BOARD OF TRUSTEES

5 Revised Law

6 Sec. 2206.201. BOARD OF TRUSTEES. (a) A pool is governed
7 by a board of trustees as provided by the plan of operation.

8 (b) Not later than the 15th day after the date the temporary
9 board of a pool completes the plan of operation, the initial regular
10 board must be selected and take office as provided by the plan.

11 (c) An individual serving on the board who is an officer or
12 employee of a school district or junior college district covered by
13 the pool performs duties on the board as additional duties required
14 of the individual's original office or employment. (V.T.I.C. Art.
15 21.49-17, Secs. 6(a), (b), (c).)

16 Source Law

17 Sec. 6. (a) The pool is governed by a board of
18 trustees as provided in the plan.

19 (b) Not later than the 15th day after the plan is
20 completed by the temporary board, the initial regular
21 board must be selected and take office as provided by
22 the plan.

23 (c) A person serving on the board who is an
24 officer or employee of an entity covered by the pool
25 performs duties on the board as additional duties
26 required of his original office or employment.

27 Revised Law

28 Sec. 2206.202. GENERAL AUTHORITY OF BOARD; RULES. (a) A
29 board is responsible for the general administration and operation
30 of the pool and the pool's fund.

31 (b) The board may:

32 (1) exercise powers and enter into contracts necessary
33 to implement this chapter and the plan of operation; and

34 (2) adopt rules to implement this chapter and the plan
35 of operation. (V.T.I.C. Art. 21.49-17, Secs. 6(d), 10, 14.)

36 Source Law

37 [Sec. 6]

38 (d) The general administration and operation of
39 the pool and its fund are vested in the board.

1 Sec. 10. The board may exercise any powers and
2 may enter into any contracts necessary to carry out
3 this article and the plan.

4 Sec. 14. The board may adopt rules to carry out
5 this article and the plan.

6 Revised Law

7 Sec. 2206.203. PERSONNEL; CONTRACTS FOR SERVICES. (a) A
8 board may employ a fund manager and other persons necessary to
9 implement this chapter and the plan of operation.

10 (b) The board may employ or contract with a person or
11 insurer for underwriting, accounting, claims, and other services.
12 (V.T.I.C. Art. 21.49-17, Sec. 11.)

13 Source Law

14 Sec. 11. (a) The board may employ a fund
15 manager and other persons necessary to carry out this
16 article and the plan.

17 (b) The board may employ or contract with
18 persons or insurance carriers for underwriting,
19 accounting, claims, and other services.

20 Revised Law

21 Sec. 2206.204. PERFORMANCE BOND REQUIRED. (a) Each board
22 member and each board employee who has authority over money in the
23 fund or money collected or invested by the pool shall execute a bond
24 in an amount determined by the board. The bond must be payable to
25 the pool and conditioned on the faithful performance of the
26 person's duties.

27 (b) The pool shall pay the cost of a bond executed under
28 Subsection (a). (V.T.I.C. Art. 21.49-17, Sec. 6(f).)

29 Source Law

30 (f) Each member of the board and each employee
31 of the board who has any authority over money in the
32 fund or money collected or invested by the pool shall
33 execute a bond in an amount determined by the board,
34 payable to the pool, conditioned on the faithful
35 performance of his duties. The cost of the bond shall
36 be paid by the pool.

37 Revised Law

38 Sec. 2206.205. IMMUNITY FROM CERTAIN LIABILITIES. A board
39 member or board employee is not liable:

40 (1) with respect to a claim or judgment for which
41 coverage is provided by the pool; or

1 (2) for a claim or judgment made against a school
2 district or junior college district covered by the pool. (V.T.I.C.
3 Art. 21.49-17, Sec. 6(e).)

4 Source Law

5 (e) A member or employee of the board is not
6 liable with respect to any claim or judgment for which
7 coverage is provided by the pool or for a claim or
8 judgment against any entity covered by the pool
9 against whom a claim is made.

10 [Sections 2206.206-2206.250 reserved for expansion]

11 SUBCHAPTER F. RISK MANAGEMENT FUND

12 Revised Law

13 Sec. 2206.251. FUND CREATION; MANAGEMENT. (a) Immediately
14 after taking office, an initial regular board shall create a risk
15 management fund. The fund must include:

16 (1) fees, contributions, and premiums collected by the
17 pool;

18 (2) investments of money in the fund;

19 (3) interest earned on investments made by the pool;

20 and

21 (4) all other income received by the pool.

22 (b) The board shall manage and invest the money in the fund
23 in the manner provided by the plan of operation. (V.T.I.C. Art.
24 21.49-17, Secs. 7(a), (b).)

25 Source Law

26 Sec. 7. (a) Immediately after taking office,
27 the initial regular board shall create a risk
28 management fund. The fund must include:

29 (1) fees, contributions, and premiums
30 collected by the pool;

31 (2) investments of money in the fund;

32 (3) interest earned on investments made by
33 the pool; and

34 (4) any other income received by the pool
35 from any sources.

36 (b) The board shall manage and invest the money
37 in the fund in the manner provided by the plan.

38 Revised Law

39 Sec. 2206.252. USES OF FUND. (a) The money in a pool's
40 fund:

41 (1) shall be used to pay liability claims and

1 judgments against school districts or junior college districts that
2 participate in the pool, not to exceed the limits of the coverage
3 provided by the pool; and

4 (2) may be used to pay the administrative and
5 management costs of the pool and the fund, not to exceed the limits
6 provided in the plan of operation.

7 (b) On the board's approval, a pool may pay commissions from
8 the fund. (V.T.I.C. Art. 21.49-17, Secs. 7(c), 13.)

9 Source Law

10 [Sec. 7]

11 (c) The money in the fund shall be used to pay
12 liability claims and judgments against entities that
13 are participants in the pool up to the limits of the
14 coverage provided by the pool. Also, money in the fund
15 may be used to pay the administrative and management
16 costs of the pool and the fund up to the limits
17 provided in the plan.

18 Sec. 13. A pool may pay commissions from the
19 fund on approval of the board.

20 [Sections 2206.253-2206.300 reserved for expansion]

21 SUBCHAPTER G. PREMIUM RATES AND COVERAGE; REINSURANCE

22 Revised Law

23 Sec. 2206.301. PREMIUM RATES AND COVERAGE LIMITS. A pool's
24 board shall determine the premium rates charged by the pool and pool
25 coverage limits to ensure that the pool and the fund are actuarially
26 sound. (V.T.I.C. Art. 21.49-17, Sec. 8.)

27 Source Law

28 Sec. 8. The board shall determine the rates for
29 premiums that will be charged and the limits of
30 coverage provided to assure that the pool and the fund
31 are actuarially sound.

32 Revised Law

33 Sec. 2206.302. GUARANTEED ISSUANCE OF INITIAL COVERAGE;
34 RISK MANAGEMENT. (a) Subject to Subsection (b), a school
35 district or junior college district that applies for initial
36 coverage through a pool is entitled to that coverage for a period of
37 not less than one year, regardless of loss history. The board may
38 approve a longer period for the initial coverage.

39 (b) For a school district or junior college district to

1 obtain initial coverage, the board may require that the district
2 participate in a risk management appraisal and comply with the
3 recommendations resulting from the appraisal.

4 (c) If complying with the recommended risk management
5 techniques resulting from the appraisal does not reduce the school
6 district's or junior college district's losses during the initial
7 coverage period sufficiently to meet the pool's underwriting
8 standards, the board may deny the district subsequent coverage
9 through the pool.

10 (d) The pool may assess a surcharge to a school district or
11 junior college district covered during the initial coverage period
12 if the district does not meet the basic underwriting guidelines for
13 the pool. (V.T.I.C. Art. 21.49-17, Sec. 12.)

14 Source Law

15 Sec. 12. (a) An entity that applies for
16 initial coverage from a pool is entitled to coverage
17 for an initial period of not less than one year
18 regardless of loss history.

19 (b) The board may approve a longer period of
20 initial coverage.

21 (c) To obtain coverage for the initial period,
22 the board may require that the entity participate in a
23 risk management appraisal and comply with the
24 recommendations obtained from the appraisal.

25 (d) If risk management techniques suggested by
26 the appraisal do not sufficiently reduce losses during
27 the initial coverage period to meet the pool's
28 underwriting standards, the board may deny an entity
29 further coverage by the pool.

30 (e) A pool may assess a surcharge to any risk
31 covered during the initial period if the risk does not
32 meet the basic underwriting guidelines for the pool.

33 Revisor's Note

34 Section 12(e), V.T.I.C. Article 21.49-17,
35 authorizes a risk management pool to assess a
36 surcharge to "any risk" covered during the period of
37 initial coverage if "the risk" fails to meet certain
38 guidelines. The revised law substitutes "school
39 district or junior college district" for "risk"
40 because in this context, "risk" means a school
41 district or junior college district that is covered by
42 the insurance obtained through the pool and,

consequently, the entity against which the pool would assess the surcharge.

Revised Law

Sec. 2206.303. REINSURANCE. A board may purchase reinsurance for a risk covered through the pool. (V.T.I.C. Art. 21.49-17, Sec. 9.)

Source Law

Sec. 9. The board may purchase reinsurance for any risks covered by the pool.

Revisor's Note
(End of Chapter)

Section 2(a), V.T.I.C. Article 21.49-17, allows for the creation of separate risk management pools for school districts and junior college districts. The revised law omits the provision as unnecessary because it duplicates the substance of Section 2(b), V.T.I.C. Article 21.49-17, revised in this chapter as Sections 2206.051(a) and 2206.101(a). The omitted law reads:

Sec. 2. (a) Separate risk management pools may be created for school districts and for junior college districts as provided by this article.

CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND CERTAIN EDUCATIONAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

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Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE 1319

[Sections 2207.003-2207.050 reserved for expansion]

SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

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[Sections 2207.054-2207.100 reserved for expansion]

1 SUBCHAPTER C. SCHOOL DISTRICT EXCESS LIABILITY POOL

2 Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS

3 LIABILITY POOL 1322

4 Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT

5 PERMITTED 1323

6 Sec. 2207.103. SELECTION OF TEMPORARY BOARD 1323

7 [Sections 2207.104-2207.150 reserved for expansion]

8 SUBCHAPTER D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

9 Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT

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14 [Sections 2207.154-2207.200 reserved for expansion]

15 SUBCHAPTER E. PLAN OF OPERATION

16 Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION 1325

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18 [Sections 2207.203-2207.250 reserved for expansion]

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11 Sec. 2207.354. DEPOSITORY BANK 1339

12 [Sections 2207.355-2207.400 reserved for expansion]

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24 CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND CERTAIN

25 EDUCATIONAL ENTITIES

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Revised Law

28 Sec. 2207.001. DEFINITIONS. In this chapter:

29 (1) "Board" means the board of trustees of a pool.

30 (2) "County" means a county in this state.

31 (3) "Fund" means an excess liability fund.

32 (4) "Junior college district" means a junior college

33 district created under the laws of this state.

34 (5) "Pool" means an excess liability pool created

1 under this chapter.

2 (6) "School district" means a public school district
3 created under the laws of this state. (V.T.I.C. Art. 21.49-13,
4 Secs. 1(1), (2), (3), (4), (5), (6).)

5 Source Law

6 Art. 21.49-13

7 Sec. 1. In this article:

8 (1) "Pool" means an excess liability pool
9 created under this article.

10 (2) "Fund" means an excess liability fund.

11 (3) "Board" means the board of trustees of
12 a pool.

13 (4) "County" means a county in this state.

14 (5) "School district" means a public
15 school district created under the laws of this state.

16 (6) "Junior college district" means a
17 junior college district organized under the laws of
18 this state.

19 Revisor's Note

20 (1) Section 1(6), V.T.I.C. Article 21.49-13,
21 refers to a junior college district "organized under
22 the laws of this state." The revised law substitutes
23 "created" for "organized" for consistency with the
24 definition of "school district" in Section 1(5),
25 V.T.I.C. Article 21.49-13, revised in this section,
26 and because, in context, the words have the same
27 meaning.

28 (2) Section 1(7), V.T.I.C. Article 21.49-13,
29 defines "entity." The revised law omits this
30 definition and, throughout this chapter, substitutes
31 the substance of the definition for the term "entity."
32 The omitted law reads:

33 (7) "Entity" means a county,
34 school district, or junior college
35 district.

36 Revised Law

37 Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF
38 INSURANCE. (a) Except as provided by Subsection (b), a pool is not
39 engaged in the business of insurance under this code or other laws
40 of this state, and the department does not have jurisdiction over a
41 pool.

1 (b) A pool:
2 (1) shall collect the necessary information and file
3 with the department the reports required by Subchapter D, Chapter
4 38; and
5 (2) is subject to Chapter 541 and Section 543.001.
6 (V.T.I.C. Art. 21.49-13, Sec. 22.)

7 Source Law

8 Sec. 22. (a) Except as provided by Subsection
9 (b) of this section, the pool is not considered
10 insurance under the Insurance Code and other laws of
11 this state, and the State Board of Insurance has no
12 jurisdiction over the pool.

13 (b) The pool shall collect the necessary data,
14 information, and statements and shall file with the
15 State Board of Insurance the reports and statements
16 required by Articles 1.24A and 1.24B and is subject to
17 21.21 of this code.

18 Revisor's Note

19 (1) Section 22, V.T.I.C. Article 21.49-13,
20 refers to the State Board of Insurance. Chapter 685,
21 Acts of the 73rd Legislature, Regular Session, 1993,
22 abolished the State Board of Insurance and transferred
23 its functions to the commissioner of insurance and the
24 Texas Department of Insurance. The references to the
25 State Board of Insurance have been changed
26 appropriately.

27 (2) Section 22(b), V.T.I.C. Article 21.49-13,
28 requires an excess liability pool to collect "data,
29 information, and statements" and file "reports and
30 statements" required by V.T.I.C. Articles 1.24A and
31 1.24B. The revised law omits the reference to "data"
32 because "data" is included within the meaning of
33 "information." The revised law also omits the
34 references to "statements" because V.T.I.C. Article
35 1.24B, codified as Subchapter D, Chapter 38, of this
36 code, does not require that statements be collected or
37 filed, and V.T.I.C. Article 1.24A is repealed (see
38 Revisor's Note (3) to this section).

1 (3) Section 22(b), V.T.I.C. Article 21.49-13,
2 refers to V.T.I.C. Article 1.24A. The revised law
3 omits the reference to Article 1.24A because that
4 article was repealed by Section 8.12, Chapter 685,
5 Acts of the 73rd Legislature, Regular Session, 1993.

6 [Sections 2207.003-2207.050 reserved for expansion]

7 SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

8 Revised Law

9 Sec. 2207.051. CREATION OF COUNTY EXCESS LIABILITY
10 POOL. (a) The county judges of five or more counties may, on
11 written agreement, create a county excess liability pool.

12 (b) The county excess liability pool provides excess
13 liability insurance coverage as provided by this chapter and the
14 pool's plan of operation.

15 (c) Not more than one county excess liability pool may be
16 created under this subchapter. (V.T.I.C. Art. 21.49-13, Secs. 2(b)
17 (part), (c), (d) (part).)

18 Source Law

19 (b) An excess liability pool may be created:
20 (1) for counties, on written agreement to
21 create the pool by the county judges of not fewer than
22 five counties in this state;

23 . . .
24 (c) An excess liability pool is created to
25 provide excess liability insurance coverage as
26 provided by this article and the plan.

27 (d) . . . There may not be more than one county
28 excess liability pool,

29 Revisor's Note

30 Section 2(b)(1), V.T.I.C. Article 21.49-13,
31 refers to "counties in this state." The revised law
32 omits the phrase "in this state" because "in this
33 state" is included in the definition of "county" in
34 Section 1(4), V.T.I.C. Article 21.49-13, revised in
35 this chapter as Section 2207.001(2).

36 Revised Law

37 Sec. 2207.052. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
38 A county may participate only in a pool created for counties.

1 (V.T.I.C. Art. 21.49-13, Sec. 2(d) (part).)

2 Source Law

3 (d) An entity may participate only in a pool
4 created for that type of entity. . . .

5 Revised Law

6 Sec. 2207.053. SELECTION OF TEMPORARY BOARD. At the time a
7 written agreement is executed under Section 2207.051, the county
8 judges of each county executing the agreement to create the pool
9 shall select nine individuals to:

10 (1) serve as a temporary board; and

11 (2) draft the plan of operation for the pool.

12 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

13 Source Law

14 Sec. 6. (a) At the time the written agreement
15 is executed under Section 2 of this article, the
16 creators shall select nine persons to serve as a
17 temporary board to draft the plan of operation for a
18 pool.

19 [Sections 2207.054-2207.100 reserved for expansion]

20 SUBCHAPTER C. SCHOOL DISTRICT EXCESS LIABILITY POOL

21 Revised Law

22 Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS LIABILITY
23 POOL. (a) Acting on behalf of their boards, the presidents of the
24 boards of trustees of five or more school districts may, on written
25 agreement, create a school district excess liability pool.

26 (b) The school district excess liability pool provides
27 excess liability insurance coverage as provided by this chapter and
28 the pool's plan of operation.

29 (c) Not more than one school district excess liability pool
30 may be created under this subchapter. (V.T.I.C. Art. 21.49-13,
31 Secs. 2(b) (part), (c), (d) (part).)

32 Source Law

33 (b) [An excess liability pool may be created:]

34 . . .
35 (2) for school districts, on written
36 agreement to create the pool by the presidents of the
37 boards of trustees, acting on behalf of their boards,
38 of not fewer than five school districts in this state;
39 or
40 . . .

1 (c) An excess liability pool is created to
2 provide excess liability insurance coverage as
3 provided by this article and the plan.

4 (d) . . . There may not be more than . . . one
5 school district excess liability pool, and

6 Revisor's Note

7 Section 2(b)(2), V.T.I.C. Article 21.49-13,
8 refers to "school districts in this state." "School
9 district," as defined by Section 1(5), V.T.I.C.
10 Article 21.49-13, revised in this chapter as Section
11 2207.001(6), is a school district created "under the
12 laws of this state." To be a school district created
13 under the laws of this state, the district must be in
14 this state. Therefore, the revised law omits "in this
15 state" as included within the definition of "school
16 district."

17 Revised Law

18 Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
19 A school district may participate only in a pool created for school
20 districts. (V.T.I.C. Art. 21.49-13, Sec. 2(d) (part).)

21 Source Law

22 (d) An entity may participate only in a pool
23 created for that type of entity. . . .

24 Revised Law

25 Sec. 2207.103. SELECTION OF TEMPORARY BOARD. At the time a
26 written agreement is executed under Section 2207.101, the
27 presidents of the boards of trustees of each school district
28 executing the agreement to create the pool shall select nine
29 individuals to:

30 (1) serve as a temporary board; and

31 (2) draft the plan of operation for the pool.

32 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

33 Source Law

34 Sec. 6. (a) At the time the written agreement
35 is executed under Section 2 of this article, the
36 creators shall select nine persons to serve as a
37 temporary board to draft the plan of operation for a
38 pool.

39 [Sections 2207.104-2207.150 reserved for expansion]

1 SUBCHAPTER D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

2 Revised Law

3 Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT EXCESS
4 LIABILITY POOL. (a) Acting on behalf of their boards, the
5 presiding officers of the boards of trustees of five or more junior
6 college districts may, on written agreement, create a junior
7 college district excess liability pool.

8 (b) The junior college district excess liability pool
9 provides excess liability insurance coverage as provided by this
10 chapter and the pool's plan of operation.

11 (c) Not more than one junior college district excess
12 liability pool may be created under this subchapter. (V.T.I.C.
13 Art. 21.49-13, Secs. 2(b) (part), (c), (d) (part).)

14 Source Law

15 (b) [An excess liability pool may be created:]

16
17 (3) for junior college districts, on
18 written agreement to create the pool by the presiding
19 officers of the boards of trustees, acting on behalf of
20 their boards, of not fewer than five junior college
21 districts in this state.

22 (c) An excess liability pool is created to
23 provide excess liability insurance coverage as
24 provided by this article and the plan.

25 (d) . . . There may not be more than . . . one
26 junior college district excess liability pool.

27 Revisor's Note

28 Section 2(b)(3), V.T.I.C. Article 21.49-13,
29 refers to "junior college districts in this state."
30 "Junior college district," as defined by Section
31 1(6), V.T.I.C. Article 21.49-13, revised in this
32 chapter as Section 2207.001(4), is a junior college
33 district created "under the laws of this state." To be
34 a junior college district created under the laws of
35 this state, the district must be in this state.
36 Therefore, the revised law omits "in this state" as
37 included within the definition of "junior college
38 district."

1 Revised Law

2 Sec. 2207.152. PARTICIPATION IN OTHER POOLS NOT PERMITTED.
3 A junior college district may participate only in a pool created for
4 junior college districts. (V.T.I.C. Art. 21.49-13, Sec. 2(d)
5 (part).)

6 Source Law

7 (d) An entity may participate only in a pool
8 created for that type of entity. . . .

9 Revised Law

10 Sec. 2207.153. SELECTION OF TEMPORARY BOARD. At the time a
11 written agreement is executed under Section 2207.151, the presiding
12 officers of the boards of trustees of each junior college district
13 executing the agreement to create the pool shall select nine
14 individuals to:

- 15 (1) serve as a temporary board; and
16 (2) draft the plan of operation for the pool.
17 (V.T.I.C. Art. 21.49-13, Sec. 6(a).)

18 Source Law

19 Sec. 6. (a) At the time the written agreement
20 is executed under Section 2 of this article, the
21 creators shall select nine persons to serve as a
22 temporary board to draft the plan of operation for a
23 pool.

24 [Sections 2207.154-2207.200 reserved for expansion]

25 SUBCHAPTER E. PLAN OF OPERATION

26 Revised Law

27 Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION. (a)
28 Not later than the 30th day after the date the temporary board of a
29 pool is selected, the temporary board shall meet to prepare a
30 detailed plan of operation for the pool.

31 (b) The temporary board shall complete and adopt the plan of
32 operation not later than the 90th day after the date the temporary
33 board is selected. (V.T.I.C. Art. 21.49-13, Secs. 6(b), (d).)

34 Source Law

35 (b) Within 30 days after selection, the members
36 of a temporary board shall meet to prepare a detailed
37 plan of operation for the pool.

1 (d) The temporary board shall complete and adopt
2 the plan of operation within 90 days after the date of
3 the appointment of the temporary board.

4 Revised Law

5 Sec. 2207.202. CONTENTS OF PLAN OF OPERATION. (a) Subject
6 to the requirements of this chapter, a pool's plan of operation must
7 include:

8 (1) the organizational structure of the pool,
9 including:

10 (A) the method of selecting the board;

11 (B) the board's method of procedure and
12 operation; and

13 (C) a summary of the method for managing and
14 operating the pool;

15 (2) a description of the contributions and other
16 financial arrangements necessary to cover the initial expenses of
17 the pool and estimates, supported by statistical data, of the
18 amounts of those contributions or other financial arrangements;

19 (3) underwriting standards and procedures for
20 evaluating risks;

21 (4) procedures for purchasing reinsurance;

22 (5) methods, procedures, and guidelines for:

23 (A) establishing the premium rates for and
24 maximum limits of excess liability insurance coverage available
25 from the pool; and

26 (B) managing and investing money in the fund
27 created for the pool;

28 (6) procedures for processing and paying claims;

29 (7) methods and procedures for defraying losses and
30 expenses of the pool;

31 (8) guidelines for nonrenewal of coverage;

32 (9) minimum capital and surplus to be maintained by
33 the pool; and

34 (10) minimum standards for reserve requirements for
35 the pool.

1 (b) The plan of operation may include any matter relating to
2 the organization and operation of the pool or to the pool's
3 finances. (V.T.I.C. Art. 21.49-13, Sec. 6(c).)

4 Source Law

5 (c) The plan of operation may include any
6 matters relating to the organization and operation of
7 the pool and the pool's finances. The plan must
8 include:

9 (1) the organizational structure of the
10 pool, including the method of selection of the board,
11 the method of procedure and operation of the board, and
12 a summary of the method for managing and operating the
13 pool;

14 (2) a description of the contributions and
15 other financial arrangements necessary to cover the
16 initial expenses of the pool and estimates supported
17 by statistical data of the amounts of those
18 contributions or other financial arrangements;

19 (3) underwriting standards and procedures
20 for the evaluation of risks;

21 (4) procedures for purchase of
22 reinsurance;

23 (5) methods, procedures, and guidelines
24 for establishing rates for premiums for and maximum
25 limits of excess coverage available from the pool;

26 (6) procedures for the processing and
27 payment of claims;

28 (7) methods and procedures for defraying
29 any losses and expenses of the pool;

30 (8) methods, procedures, and guidelines
31 for the management and investment of the fund;

32 (9) guidelines for nonrenewal of coverage;

33 (10) minimum limits of capital and surplus
34 to be maintained by the pool; and

35 (11) minimum standards for reserve
36 requirements for the pool.

37 Revisor's Note

38 Section 6(c), V.T.I.C. Article 21.49-13,
39 specifies certain provisions that an excess liability
40 pool must include in the plan of operation. For the
41 convenience of the reader, the revised law adds a
42 reference to "the requirements of this chapter"
43 because other provisions of V.T.I.C. Article 21.49-13,
44 revised in this chapter, specify additional
45 requirements applicable to the provisions of the plan
46 of operation.

47 [Sections 2207.203-2207.250 reserved for expansion]

1 SUBCHAPTER F. BOARD OF TRUSTEES

2 Revised Law

3 Sec. 2207.251. BOARD OF TRUSTEES. (a) A pool is governed
4 by a board of trustees composed of nine members selected as provided
5 by the plan of operation.

6 (b) Not later than the 15th day after the date the temporary
7 board of a pool adopts the plan of operation, the initial regular
8 board must be selected as provided by the plan. The members of the
9 initial regular board shall take office not later than the 30th day
10 after the date the plan of operation is adopted.

11 (c) An individual serving on the board who is an officer or
12 employee of a county, school district, or junior college district
13 covered by the pool performs duties on the board as additional
14 duties required of the individual's original office or employment.
15 (V.T.I.C. Art. 21.49-13, Secs. 6(e), 7(a), (d).)

16 Source Law

17 [Sec. 6]

18 (e) Within 15 days following the day on which
19 the plan of operation is adopted, the first board must
20 be selected as provided by the plan of operation. The
21 members of the first board shall take office not later
22 than the 30th day following the date of the adoption of
23 the plan of operation.

24 Sec. 7. (a) A pool is governed by a board of
25 nine trustees selected as provided by the plan of
26 operation.

27 (d) A person serving on the board who is an
28 officer or employee of an entity covered by the pool
29 performs duties on the board as additional duties
30 required of his original office or employment.

31 Revisor's Note

32 Section 7(a), V.T.I.C. Article 21.49-13,
33 provides that an excess liability pool is governed by a
34 board of nine "trustees." Throughout this chapter,
35 the revised law substitutes "members" for "trustees"
36 for consistency and because "member" is more commonly
37 used in this chapter to describe a person serving on
38 the board of trustees.

39 Revised Law

40 Sec. 2207.252. TERMS; VACANCY. (a) Board members serve

1 two-year terms that expire at the time provided by the plan of
2 operation.

3 (b) A vacancy on the board shall be filled as provided by the
4 plan of operation. (V.T.I.C. Art. 21.49-13, Secs. 7(b), (c).)

5 Source Law

6 (b) Members of the board serve for terms of two
7 years with the terms expiring at the time provided by
8 the plan of operation.

9 (c) A vacancy on the board shall be filled as
10 provided by the plan of operation.

11 Revised Law

12 Sec. 2207.253. PERFORMANCE BOND REQUIRED. (a) Each board
13 member shall execute a bond in the amount required by the plan of
14 operation. The bond must be payable to the pool and conditioned on
15 the faithful performance of the member's duties.

16 (b) The pool shall pay the cost of the bond executed under
17 this section. (V.T.I.C. Art. 21.49-13, Sec. 7(e).)

18 Source Law

19 (e) Each member of the board shall execute a
20 bond in the amount required by the plan of operation
21 payable to the pool and conditioned on the faithful
22 performance of his duties. The pool shall pay the cost
23 of the bond.

24 Revised Law

25 Sec. 2207.254. COMPENSATION. A board member is not
26 entitled to compensation for the member's service on the board.
27 (V.T.I.C. Art. 21.49-13, Sec. 7(f).)

28 Source Law

29 (f) Members of the board are not entitled to
30 compensation for their service on the board.

31 Revised Law

32 Sec. 2207.255. OFFICERS; MEETINGS. (a) The board shall
33 select from the board members a presiding officer, an assistant
34 presiding officer, and a secretary who serve one-year terms that
35 expire as provided by the plan of operation.

36 (b) The board shall hold meetings at the call of the
37 presiding officer and at times established by the board's rules.

38 (c) A majority of the board members constitutes a quorum.

1 (V.T.I.C. Art. 21.49-13, Secs. 7(g), (h), (i).)

2 Source Law

3 (g) The board shall select from its membership
4 persons to serve as chairman, vice-chairman, and
5 secretary. The persons selected serve for terms of one
6 year that expire as provided by the plan of operation.

7 (h) The board shall hold meetings at the call of
8 the chairman and at times established by its rules.

9 (i) A majority of the members of the board
10 constitutes a quorum.

11 Revisor's Note

12 Section 7(g), V.T.I.C. Article 21.49-13, refers
13 to the "chairman" and "vice-chairman" of the board of
14 trustees. Section 7(h), V.T.I.C. Article 21.49-13,
15 refers to the "chairman" of the board of trustees. The
16 revised law substitutes "presiding officer" and
17 "assistant presiding officer" for "chairman" and
18 "vice-chairman" respectively because, in context, the
19 terms have the same meaning and "presiding officer"
20 and "assistant presiding officer" are more commonly
21 used and are gender-neutral.

22 Revised Law

23 Sec. 2207.256. GENERAL POWERS AND DUTIES OF BOARD. (a) In
24 addition to other duties provided by the plan of operation, the
25 board shall:

26 (1) approve contracts other than excess liability
27 insurance contracts issued by the pool to a county, school
28 district, or junior college district, as applicable;

29 (2) adopt premium rate schedules and policy forms for
30 the pool; and

31 (3) receive service of summons on behalf of the pool.

32 (b) The board may:

33 (1) adopt necessary rules, including rules to
34 implement this chapter;

35 (2) delegate specific responsibilities to the pool
36 manager; and

37 (3) amend the plan of operation to ensure the orderly

1 management and operation of the pool. (V.T.I.C. Art. 21.49-13,
2 Secs. 7(j) (part), (k), 11.)

3 Source Law

4 [Sec. 7]

5 (j) In addition to other duties provided by this
6 article and the plan of operation, the board shall:

7 (1) approve contracts other than excess
8 liability insurance contracts issued to entities by
9 the pool;

10 (2) consider and adopt premium rate
11 schedules for the pool;

12 (3) consider and adopt policy forms for
13 the pool;

14 (4) receive service of summons on behalf
15 of the pool; and

16 . . .
17 (k) In addition to other authority provided by
18 this article, the board may:

19 (1) adopt necessary rules;

20 (2) delegate specific responsibilities to
21 the pool manager; and

22 (3) amend the plan of operation to assure
23 the orderly management and operation of the pool.

24 Sec. 11. The board may adopt and amend rules to
25 carry out this article.

26 Revisor's Note

27 (1) Section 7(j), V.T.I.C. Article 21.49-13,
28 prescribes certain duties of the board of trustees of
29 an excess liability pool that are "[i]n addition to
30 other duties provided by this article," and Section
31 7(k), V.T.I.C. Article 21.49-13, grants the board
32 certain powers that are "[i]n addition to other
33 authority provided by this article." The revised law
34 omits these provisions as unnecessary. It is a common
35 rule of statutory construction that statutes are
36 intended to be read cumulatively. A provision of
37 Article 21.49-13, revised as this chapter, that grants
38 additional powers to or prescribes additional duties
39 for the board applies by its own terms without the
40 necessity of additional references either
41 specifically or generally in this chapter.

42 (2) Sections 7(j)(2) and (3), V.T.I.C. Article
43 21.49-13, require the board of trustees of an excess
44 liability pool to "consider and adopt" premium rate

1 schedules and policy forms, respectively. The revised
2 law omits the reference to "consider" as unnecessary
3 because it is implied that the board must consider a
4 rate schedule or policy form before adopting the rate
5 schedule or policy form.

6 (3) Section 11, V.T.I.C. Article 21.49-13,
7 authorizes the board of trustees of an excess
8 liability pool to adopt and "amend" rules to carry out
9 the article. The revised law omits as unnecessary the
10 reference to amending rules because the authority to
11 amend rules is implied in the authority to adopt rules.

12 Revised Law

13 Sec. 2207.257. ANNUAL AUDIT; REPORT. (a) Each year as
14 provided by the plan of operation, the board shall have an actuary
15 audit the capital, surplus, and reserves of the pool and prepare a
16 formal report for the pool and the members of the pool.

17 (b) The actuary must be a member of the American Academy of
18 Actuaries. (V.T.I.C. Art. 21.49-13, Sec. 13(h).)

19 Source Law

20 (h) Each year as provided by the plan of
21 operation, the board shall have an actuary who is a
22 member of the American Academy of Actuaries audit the
23 capital, surplus, and reserves of the pool and prepare
24 for the pool and its members a formal report.

25 Revised Law

26 Sec. 2207.258. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
27 LIABILITIES. A board member is not liable:

28 (1) with respect to a claim or judgment for which
29 coverage is provided by the pool; or

30 (2) for a claim or judgment against a county, school
31 district, or junior college district covered by the applicable
32 pool. (V.T.I.C. Art. 21.49-13, Sec. 7(1).)

33 Source Law

34 (1) A member of the board is not liable with
35 respect to a claim or judgment for which coverage is
36 provided by the pool or for a claim or judgment against
37 an entity covered by the pool against whom a claim is
38 made.

1 [Sections 2207.259-2207.300 reserved for expansion]

2 SUBCHAPTER G. OPERATION OF POOL

3 Revised Law

4 Sec. 2207.301. GENERAL POWERS AND DUTIES OF POOL. (a) A
5 pool shall:

6 (1) issue excess liability insurance coverage to each
7 county, school district, or junior college district entitled to
8 coverage under this chapter;

9 (2) collect premiums for coverage issued or renewed by
10 the pool;

11 (3) process and pay valid claims; and

12 (4) maintain detailed data regarding the pool.

13 (b) The pool may:

14 (1) enter into contracts;

15 (2) purchase reinsurance;

16 (3) cancel or refuse to renew coverage; and

17 (4) perform any other act necessary to implement this
18 chapter, the plan of operation, or a rule adopted by the board.

19 (V.T.I.C. Art. 21.49-13, Sec. 12.)

20 Source Law

21 Sec. 12. (a) A pool shall:

22 (1) issue excess liability coverage to
23 each entity entitled to coverage under this article;

24 (2) collect premiums for coverage issued
25 or renewed by the pool;

26 (3) process and pay valid claims; and

27 (4) maintain detailed data regarding the
28 pool.

29 (b) The pool may:

30 (1) enter into contracts;

31 (2) purchase reinsurance;

32 (3) cancel or refuse to renew coverage;

33 and

34 (4) perform any other acts necessary to
35 carry out this article, the plan of operation, and the
36 rules adopted by the board.

37 Revised Law

38 Sec. 2207.302. POOL MANAGER; PERFORMANCE BOND
39 REQUIRED. (a) The board shall appoint a pool manager who serves at
40 the pleasure of the board, and the board shall supervise the pool
41 manager's activities.

1 (b) The pool manager is entitled to receive the compensation
2 authorized by the board.

3 (c) The pool manager shall execute a bond in the amount
4 determined by the board. The bond must be payable to the pool and
5 conditioned on the faithful performance of the pool manager's
6 duties.

7 (d) The pool shall pay the cost of the bond executed under
8 this section. (V.T.I.C. Art. 21.49-13, Secs. 7(j) (part), 8(a),
9 (b), (c).)

10 Source Law

11 [Sec. 7]

12 (j) . . . the board shall:

13 . . .
14 (5) appoint and supervise the activities
15 of the pool manager.

16 Sec. 8. (a) The board shall appoint a pool
17 manager who shall serve at the pleasure of the board.

18 (b) The pool manager is entitled to receive the
19 compensation authorized by the board.

20 (c) The pool manager shall execute a bond in the
21 amount determined by the board, payable to the pool,
22 conditioned on the faithful performance of his duties.
23 The pool shall pay the cost of the bond.

24 Revised Law

25 Sec. 2207.303. GENERAL POWERS AND DUTIES OF POOL
26 MANAGER. (a) The pool manager shall manage and conduct the
27 affairs of the pool under the general supervision of the board and
28 shall perform any other duties as directed by the board.

29 (b) In addition to any other duties provided by the board,
30 the pool manager shall:

31 (1) receive and pass on applications for excess
32 liability insurance coverage from the pool;

33 (2) negotiate contracts for the pool; and

34 (3) prepare and submit to the board for approval
35 proposed policy forms for coverage from the pool.

36 (c) The pool manager may refuse to renew the coverage of a
37 county, school district, or junior college district insured by the
38 pool based on the guidelines included in the plan of operation.
39 (V.T.I.C. Art 21.49-13, Secs. 8(d), (e) (part), (f).)

1 the board. The bond must be payable to the board and conditioned on
2 the faithful performance of the employee's or other person's duties
3 to the pool. (V.T.I.C. Art. 21.49-13, Sec. 9(c).)

4 Source Law

5 (c) The board may require any employee or person
6 with whom it contracts under this section to execute a
7 bond in an amount determined by the board, payable to
8 the board, and conditioned on the faithful performance
9 of the employee's or person's duties or
10 responsibilities to the pool.

11 Revisor's Note

12 Section 9(c), V.T.I.C. Article 21.49-13,
13 authorizes the board of trustees to require an
14 employee or contract personnel to execute a bond
15 conditioned on the faithful performance of that
16 person's "duties or responsibilities" to the pool. The
17 revised law omits the reference to "responsibilities"
18 as unnecessary because, in context, "responsibility"
19 is included within the meaning of "duty."

20 Revised Law

21 Sec. 2207.306. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
22 CERTAIN LIABILITIES. An employee or a person with whom the pool
23 manager contracts under Section 2207.304 is not liable:

24 (1) with respect to a claim or judgment for which
25 coverage is provided by the pool; or

26 (2) for a claim or judgment against a county, school
27 district, or junior college district covered by the applicable
28 pool. (V.T.I.C. Art. 21.49-13, Sec. 9(d).)

29 Source Law

30 (d) An employee or person with whom the pool has
31 contracted under this section is not liable with
32 respect to any claim or judgment for which coverage is
33 provided by the pool or for any claim or judgment
34 against any entity covered by the pool against whom a
35 claim is made.

36 Revised Law

37 Sec. 2207.307. OFFICE; RECORDS. (a) A pool shall maintain
38 the pool's principal office in Austin, Texas.

39 (b) Records, files, and other documents and information

1 relating to the pool must be maintained in the pool's principal
2 office. (V.T.I.C. Art. 21.49-13, Sec. 10.)

3 Source Law

4 Sec. 10. (a) A pool shall maintain its
5 principal office in Austin, Texas.

6 (b) The records, files, and other documents and
7 information relating to the pool must be maintained in
8 the pool's principal office.

9 [Sections 2207.308-2207.350 reserved for expansion]

10 SUBCHAPTER H. EXCESS LIABILITY FUND

11 Revised Law

12 Sec. 2207.351. FUND CREATION; MANAGEMENT. (a) On creation
13 of a pool, the initial regular board shall create an excess
14 liability fund.

15 (b) The fund is composed of:

16 (1) premiums paid by counties, school districts, or
17 junior college districts, as applicable, for coverage provided by
18 the pool;

19 (2) contributions and other money received by the pool
20 to cover the initial expenses of the fund;

21 (3) investments of the fund and money earned from
22 those investments; and

23 (4) any other money received by the pool.

24 (c) The pool manager shall manage the fund under the general
25 supervision of the board. The fund manager, under the general
26 supervision of the board, shall manage and invest the money in the
27 fund in the manner provided by the plan of operation.

28 (d) Money earned by the investment of money in the fund must
29 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
30 21.49-13, Secs. 13(a), (b), (c), 14.)

31 Source Law

32 Sec. 13. (a) On creation of a pool, the first
33 board shall create an excess liability fund.

34 (b) The fund is composed of:

35 (1) premiums paid by entities for coverage
36 by the pool;

37 (2) contributions and other money received
38 by the pool to cover the initial expenses of the fund;

39 (3) investments and money earned from
40 investments of the fund; and

1 (4) any other money received by the pool.
2 (c) The pool manager shall manage the fund under
3 the general supervision of the board.

4 Sec. 14. (a) The fund manager, under the
5 general supervision of the board, shall manage and
6 invest the money in the fund in the manner provided by
7 the plan of operation.

8 (b) Money earned by investment of money in the
9 fund must be deposited in the fund or reinvested for
10 the fund.

11 Revised Law

12 Sec. 2207.352. CONTRIBUTIONS. The board shall determine
13 the amount of any contributions necessary to meet the initial
14 expenses of the pool. The board shall make this determination based
15 on the data provided by the plan of operation. (V.T.I.C.
16 Art. 21.49-13, Sec. 15.)

17 Source Law

18 Sec. 15. The board shall determine the amount of
19 any contributions necessary to meet initial expenses
20 of the pool. The board shall make this determination
21 based on the data provided in the plan of operation.

22 Revised Law

23 Sec. 2207.353. USES OF FUND. (a) Administrative expenses
24 of the pool may be paid from the fund. Payments for administrative
25 expenses during a fiscal year of the pool may not exceed the amount
26 established by the board.

27 (b) The pool may pay commissions from the fund on approval
28 of the board.

29 (c) Money in the fund may not be used to pay:

30 (1) punitive damages; or

31 (2) a fine or penalty imposed for a violation of:

32 (A) a statute;

33 (B) an administrative rule or regulation; or

34 (C) an order, rule, or ordinance.

35 (d) Money for a claim may not be paid from the fund under
36 excess liability insurance coverage until all benefits payable
37 under any other underlying liability insurance policy covering the
38 claim or judgment are exhausted. (V.T.I.C. Art. 21.49-13, Secs.
39 13(d), (e), (f), 21.)

Source Law

[Sec. 13]

(d) Administrative expenses of the pool may be paid from the fund, but payments for this purpose during any fiscal year of the pool may not exceed the amount established by the board.

(e) Money in the fund may not be used to pay punitive damages, fines or penalties for violation of a civil or criminal statute, or fines or penalties imposed for violation of an administrative rule or regulation, or an order, rule, or ordinance.

(f) Money for a claim may not be paid from the fund under excess liability insurance coverage unless and until all benefits payable under any other underlying policy of liability insurance covering the claim or judgment are exhausted.

Sec. 21. A pool may pay commissions from the fund on approval of the board.

Revisor's Note

Section 13(e), V.T.I.C. Article 21.49-13, refers to "fines or penalties for violation of a civil or criminal statute." The revised law omits the reference to "civil or criminal" as unnecessary because all statutes are either "civil" or "criminal."

Revised Law

Sec. 2207.354. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for money in the fund.

(b) A depository bank must execute a bond or provide other security before the pool manager may deposit fund money in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The bond or other security must be in an amount sufficient to secure the excess amount of the deposit.

(V.T.I.C. Art. 21.49-13, Sec. 13(g).)

Source Law

(g) The board may select one or more banks to serve as depository for money of the fund. Before the pool manager deposits fund money in a depository bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or provide other security in an amount sufficient to secure from loss the fund money that exceeds the amount secured by the Federal Deposit Insurance Corporation.

[Sections 2207.355-2207.400 reserved for expansion]

1 SUBCHAPTER I. POOL COVERAGE

2 Revised Law

3 Sec. 2207.401. ENTITLEMENT TO COVERAGE. A county, school
4 district, or junior college district is entitled to coverage from
5 the pool if the county, school district, or junior college
6 district:

- 7 (1) submits a complete application;
8 (2) provides other information required by the pool;
9 (3) meets the underwriting standards established by
10 the pool; and
11 (4) pays the premiums required for the coverage.

12 (V.T.I.C. Art. 21.49-13, Sec. 4.)

13 Source Law

14 Sec. 4. An entity is entitled to coverage from
15 the pool on:

- 16 (1) submitting a complete application;
17 (2) providing any other information
18 required by the pool;
19 (3) meeting the underwriting standards
20 established by the pool; and
21 (4) paying the premiums required for the
22 coverage.

23 Revised Law

24 Sec. 2207.402. SCOPE OF COVERAGE. (a) A pool shall insure
25 a county, school district, or junior college district and the
26 entity's officers and employees against liability for acts and
27 omissions under the laws governing that county, school district, or
28 junior college district and the entity's officers and employees in
29 their official or employment capacities.

30 (b) Except as provided by Subsection (c), under the excess
31 liability insurance coverage, a pool shall pay any portion of a
32 claim against a county, school district, or junior college
33 district, as applicable, and the entity's officers and employees
34 that:

- 35 (1) exceeds \$500,000; and
36 (2) is finally determined or settled or is included in
37 a final judgment of a court.

38 (c) The amount paid by a pool under this section may not

1 exceed the amount the board determines is actuarially sound for the
2 pool.

3 (d) A pool may participate in evaluating, settling, or
4 defending a claim made under the excess liability insurance
5 coverage. (V.T.I.C. Art. 21.49-13, Sec. 3.)

6 Source Law

7 Sec. 3. (a) A pool shall insure an entity and
8 its officers and employees against liability for acts
9 and omissions under the laws governing that entity and
10 its officers and employees in their official or
11 employment capacities.

12 (b) Under excess liability insurance coverage,
13 a pool shall pay that portion of a claim against an
14 entity and its officers and employees that is finally
15 determined or settled or is included in a final
16 judgment of a court and that is in excess of \$500,000,
17 but the amount paid by the pool may not be in excess of
18 the amount determined by the board to be actuarially
19 sound for the pool.

20 (c) Under the insurance coverage, the pool may
21 participate in the evaluation, settlement, or defense
22 of any claim.

23 Revised Law

24 Sec. 2207.403. BASIS OF COVERAGE. The pool may provide
25 excess liability insurance coverage on a claims-made basis or an
26 occurrence basis. (V.T.I.C. Art. 21.49-13, Sec. 18.)

27 Source Law

28 Sec. 18. Excess liability coverage provided by
29 the pool may be provided on a claims-made or an
30 occurrence basis.

31 Revised Law

32 Sec. 2207.404. RATES AND LIMITS OF COVERAGE. (a) To
33 ensure that the pool is actuarially sound, the board shall:

34 (1) set the premium rates charged; and

35 (2) determine the maximum limits of coverage provided.

36 (b) The pool manager, for the board's consideration, shall:

37 (1) collect and compile statistical data relating to
38 the excess liability insurance coverage provided by the pool,
39 including relevant loss, expense, and premium data, and other
40 information;

41 (2) prepare the proposed premium rate schedules for
42 the approval of the board; and

1 the terms are synonymous and the former is more
2 commonly used.

3 Revised Law

4 Sec. 2207.406. COVERAGE PERIOD. A county, school
5 district, or junior college district that accepts coverage provided
6 by the applicable pool shall maintain that coverage for at least 36
7 calendar months following the month in which the pool issued the
8 coverage. (V.T.I.C. Art. 21.49-13, Sec. 17(a).)

9 Source Law

10 Sec. 17. (a) On accepting coverage from the
11 pool, an entity shall maintain that coverage for a
12 period not less than 36 calendar months following the
13 month the coverage is issued.

14 Revised Law

15 Sec. 2207.407. NONRENEWAL OF COVERAGE. (a) Except as
16 provided by Subsection (b), the applicable pool may refuse to renew
17 the coverage of a county, school district, or junior college
18 district that fails to comply with the pool's underwriting
19 standards.

20 (b) The applicable pool may not refuse to renew the coverage
21 of a county, school district, or junior college district during the
22 first 36 calendar months following the month in which the entity is
23 first provided coverage by the pool. (V.T.I.C. Art. 21.49-13,
24 Secs. 19(a), (b).)

25 Source Law

26 Sec. 19. (a) Except as provided by Subsection
27 (b) of this section, the pool may refuse to renew the
28 coverage of any entity that fails to comply with the
29 pool's underwriting standards.

30 (b) The pool may not refuse to renew the
31 coverage of an entity for the first 36 calendar months
32 following the month in which the entity was first
33 insured by the pool.

34 Revised Law

35 Sec. 2207.408. SUBSEQUENT COVERAGE. (a) A county, school
36 district, or junior college district that voluntarily discontinues
37 coverage provided by the applicable pool may not subsequently
38 obtain coverage from the pool for at least 36 calendar months
39 following the month in which the entity discontinues the coverage.

1 (b) A county, school district, or junior college district
2 whose coverage is not renewed under Section 2207.407 is not
3 eligible to subsequently apply for coverage during the 12 calendar
4 months following the month in which the applicable pool gives
5 written notice of nonrenewal. (V.T.I.C. Art. 21.49-13, Secs.
6 17(b), 19(c) (part).)

7 Source Law

8 [Sec. 17]

9 (b) An entity that voluntarily discontinues
10 coverage in the pool may not again obtain coverage from
11 the pool for at least 36 calendar months following the
12 month in which the coverage was discontinued.

13 [Sec. 19]

14 (c) . . . An entity whose coverage is not
15 renewed is not eligible to apply for new coverage
16 during the 12 calendar months beginning after the
17 month in which the pool gave written notice that it
18 would not renew the coverage.

19 Revisor's Note

20 Section 19(c), V.T.I.C. Article 21.49-13,
21 provides that Section 17(b) of that article does not
22 apply if an excess liability pool refuses to renew the
23 coverage of a county, school district, or junior
24 college district, as applicable, and provides
25 procedures for obtaining coverage subsequent to a
26 refusal to renew. Section 17(b), according to its
27 terms, prohibits a county, school district, or junior
28 college district from obtaining subsequent coverage
29 for a specified period if the entity voluntarily
30 discontinued previous pool coverage. Because the
31 pool's refusal to renew coverage under Section 19(c) is
32 not a voluntary discontinuance of coverage by a
33 county, school district, or junior college district,
34 Section 17(b) would not apply by its terms. Therefore,
35 the revised law omits as unnecessary the statement in
36 Section 19(c) that Section 17(b) does not apply if the
37 pool refuses to renew coverage. The omitted law reads:

38 (c) Section 17(b) of this article
39 does not apply to discontinuance of an

1 entity's coverage if the pool refuses
2 renewal under this section. . . .

3 Revised Law

4 Sec. 2207.409. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If
5 money in the fund would be exhausted by the payment of all final and
6 settled claims and final judgments during a fiscal year, the pool
7 shall prorate the amount paid to each person having the claim or
8 judgment.

9 (b) If the amount paid by the pool is prorated under this
10 section, each person described by Subsection (a) shall receive an
11 amount equal to the percentage that the amount owed to that person
12 by the pool bears to the total amount owed, outstanding, and payable
13 by the pool.

14 (c) The pool shall pay in the next fiscal year the remaining
15 amount that is due and unpaid to a person who receives a prorated
16 payment under this section. (V.T.I.C. Art. 21.49-13, Sec. 20.)

17 Source Law

18 Sec. 20. (a) If money in the fund will be
19 exhausted by payment of all final and settled claims
20 and final judgments during the fiscal year, the amount
21 paid by the pool to each person having a claim or
22 judgment shall be prorated, with each person receiving
23 an amount that is equal to the percentage the amount
24 owed to him by the pool bears to the total amount owed,
25 outstanding, and payable by the pool.

26 (b) The remaining amount that is due and unpaid
27 to a person who receives prorated payment under
28 Subsection (a) of this section must be paid in the
29 immediately following fiscal year.

30 Revisor's Note
31 (End of Chapter)

32 Section 2(a), V.T.I.C. Article 21.49-13, allows
33 for the creation of separate excess liability pools
34 for counties, school districts, and junior college
35 districts. The revised law omits the provision as
36 unnecessary because it duplicates the authority
37 provided by Section 2(b), V.T.I.C. Article 21.49-13,
38 revised in this chapter as Sections 2207.051(a),
39 2207.101(a), and 2207.151(a), to create excess
40 liability pools for different entities. The omitted
41 law reads:

| | | | | |
|----|---|--|-----------------|------|
| 1 | Sec. 2. | (a) | Separate excess | |
| 2 | liability pools | may be created for | | |
| 3 | counties, school districts, | and junior | | |
| 4 | college districts as provided by this | | | |
| 5 | article. | | | |
| 6 | CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL | | | |
| 7 | SUBCHAPTER A. GENERAL PROVISIONS | | | |
| 8 | Sec. 2208.001. | DEFINITIONS | | 1347 |
| 9 | Sec. 2208.002. | POOL NOT ENGAGED IN BUSINESS OF | | |
| 10 | | INSURANCE | | 1348 |
| 11 | [Sections 2208.003-2208.050 reserved for expansion] | | | |
| 12 | SUBCHAPTER B. CREATION OF POOL | | | |
| 13 | Sec. 2208.051. | CREATION OF POOL | | 1350 |
| 14 | Sec. 2208.052. | PARTICIPATION IN POOL | | 1350 |
| 15 | [Sections 2208.053-2208.100 reserved for expansion] | | | |
| 16 | SUBCHAPTER C. BOARD OF TRUSTEES | | | |
| 17 | Sec. 2208.101. | ADMINISTRATION OF POOL; BOARD | | |
| 18 | | MEMBERSHIP | | 1350 |
| 19 | Sec. 2208.102. | COMPENSATION | | 1351 |
| 20 | Sec. 2208.103. | OFFICERS; MEETINGS | | 1351 |
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| 22 | Sec. 2208.105. | IMMUNITY OF BOARD MEMBERS FROM CERTAIN | | |
| 23 | | LIABILITIES | | 1354 |
| 24 | [Sections 2208.106-2208.150 reserved for expansion] | | | |
| 25 | SUBCHAPTER D. PLAN OF OPERATION | | | |
| 26 | Sec. 2208.151. | TIME FOR CREATION OF PLAN OF OPERATION | | 1354 |
| 27 | Sec. 2208.152. | CONTENTS OF PLAN OF OPERATION | | 1355 |
| 28 | [Sections 2208.153-2208.200 reserved for expansion] | | | |
| 29 | SUBCHAPTER E. OPERATION OF POOL | | | |
| 30 | Sec. 2208.201. | GENERAL POWERS AND DUTIES OF POOL | | 1356 |
| 31 | Sec. 2208.202. | POOL MANAGER | | 1357 |
| 32 | Sec. 2208.203. | GENERAL POWERS AND DUTIES OF POOL | | |
| 33 | | MANAGER | | 1357 |
| 34 | Sec. 2208.204. | PERSONNEL | | 1358 |
| 35 | Sec. 2208.205. | PERFORMANCE BOND AUTHORIZED | | 1359 |

1 Sec. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS

2 FROM CERTAIN LIABILITIES 1359

3 Sec. 2208.207. OFFICE; RECORDS 1360

4 [Sections 2208.208-2208.250 reserved for expansion]

5 SUBCHAPTER F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND

6 Sec. 2208.251. FUND CREATION; MANAGEMENT 1360

7 Sec. 2208.252. USES OF FUND 1361

8 Sec. 2208.253. DEPOSITORY 1362

9 [Sections 2208.254-2208.300 reserved for expansion]

10 SUBCHAPTER G. POOL COVERAGE

11 Sec. 2208.301. SCOPE OF COVERAGE 1362

12 Sec. 2208.302. BASIS OF COVERAGE 1363

13 Sec. 2208.303. PUNITIVE DAMAGES NOT COVERED 1363

14 Sec. 2208.304. RATES AND LIMITS OF COVERAGE 1363

15 Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE

16 AUTHORIZED 1364

17 Sec. 2208.306. COVERAGE PERIOD 1365

18 Sec. 2208.307. NONRENEWAL OF COVERAGE 1365

19 Sec. 2208.308. SUBSEQUENT COVERAGE 1365

20 Sec. 2208.309. PAYMENT OF CLAIMS AND JUDGMENTS 1366

21 CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Revised Law

24 Sec. 2208.001. DEFINITIONS. In this chapter:

25 (1) "Board" means the board of trustees of the pool.

26 (2) "Fund" means the Texas public entity excess

27 insurance fund.

28 (3) "Insurance" means liability insurance or workers'

29 compensation insurance.

30 (4) "Pool" means the Texas public entity excess

31 insurance pool.

32 (5) "Public entity" means one or more municipalities

33 that have formed an insurance pool under Chapter 791, Government

34 Code. (V.T.I.C. Art. 21.49-11, Secs. 1(1), (2), (3), (4), (6).)

Source Law

Art. 21.49-11

Sec. 1. In this article:

(1) "Pool" means the Texas public entity excess insurance pool.

(2) "Fund" means the Texas public entity excess insurance fund.

(3) "Board" means the board of trustees of the pool.

(4) "Public entity" means a city or a group of cities who have formed an insurance pool under the provisions of The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(6) "Insurance" means liability insurance or workers' compensation insurance.

Revisor's Note

(1) Section 1(4), V.T.I.C. Article 21.49-11, refers to "a city or a group of cities." The revised law substitutes the term "municipality" for "city" because "municipality" is the term used in the Local Government Code.

(2) Section 1(4), V.T.I.C. Article 21.49-11, refers to The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes). That law was codified in 1991 as Chapter 791, Government Code. The revised law is drafted accordingly.

(3) Section 1(5), V.T.I.C. Article 21.49-11, defines the term "association." The revised law omits that definition as unnecessary because the substance of the definition is included in Section 5(a), V.T.I.C. Article 21.49-11, revised in this chapter as Section 2208.101. The omitted law reads:

Sec. 1. [In this article:]

(5) "Association" means an association whose governing board is designated by this article to administer the pool.

Revised Law

Sec. 2208.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE. (a) Except as provided by Subsection (b), the pool is not engaged in the business of insurance under this code or other

1 laws of this state, and the department has no jurisdiction over the
2 pool.

3 (b) The pool is subject to Chapter 541 and Subchapter D,
4 Chapter 38. (V.T.I.C. Art. 21.49-11, Sec. 20.)

5 Source Law

6 Sec. 20. (a) Except as provided by Subsection
7 (b) of this section, the pool is not considered
8 insurance under the Insurance Code and other laws of
9 this state, and the State Board of Insurance has no
10 jurisdiction over the pool.

11 (b) The pool is subject to Articles 1.24A,
12 1.24B, and 21.21 of this code.

13 Revisor's Note

14 (1) Section 20(a), V.T.I.C. Article 21.49-11,
15 refers to the State Board of Insurance. Chapter 685,
16 Acts of the 73rd Legislature, Regular Session, 1993,
17 abolished the board and transferred its functions to
18 the commissioner of insurance and the Texas Department
19 of Insurance, as appropriate, and the revised law is
20 drafted accordingly.

21 (2) Section 20(b), V.T.I.C. Article 21.49-11,
22 states that the Texas Public Entity Excess Insurance
23 Pool is subject to V.T.I.C. Article 1.24A. The revised
24 law omits the reference to Article 1.24A because that
25 article was repealed by Section 8.12, Chapter 685,
26 Acts of the 73rd Legislature, Regular Session, 1993.

27 (3) Section 20(b), V.T.I.C. Article 21.49-11,
28 states that the Texas Public Entity Excess Insurance
29 Pool is subject to V.T.I.C. Article 21.21. That
30 article has been revised in various chapters of this
31 code. The relevant portions of Article 21.21 are
32 revised in Chapter 541 of this code. For that reason,
33 the revised law substitutes a reference to Chapter 541
34 for the reference to Article 21.21.

35 [Sections 2208.003-2208.050 reserved for expansion]

1 SUBCHAPTER B. CREATION OF POOL

2 Revised Law

3 Sec. 2208.051. CREATION OF POOL. (a) The Texas Public
4 Entity Excess Insurance Pool is created on the written agreement of
5 the presiding officers of 25 or more public entities in this state.

6 (b) The pool provides excess liability and workers'
7 compensation insurance coverage to a public entity and the entity's
8 officers and employees as provided by this chapter. (V.T.I.C. Art.
9 21.49-11, Sec. 2(a).)

10 Source Law

11 Sec. 2. (a) On written agreement of the
12 presiding officers of not fewer than 25 public
13 entities in this state, the Texas public entity excess
14 insurance pool is created to provide excess liability
15 and workers' compensation insurance coverage to a
16 public entity and its officers and employees as
17 provided by this article.

18 Revised Law

19 Sec. 2208.052. PARTICIPATION IN POOL. A public entity is
20 entitled to coverage from the pool if the entity:

- 21 (1) submits a complete application;
22 (2) provides other relevant information required by
23 the pool;
24 (3) meets the underwriting guidelines established by
25 the pool; and
26 (4) pays the premiums required for the coverage.
27 (V.T.I.C. Art. 21.49-11, Sec. 3.)

28 Source Law

29 Sec. 3. A public entity is entitled to coverage
30 from the pool on:
31 (1) submitting a complete application;
32 (2) providing any other relevant
33 information required by the pool;
34 (3) meeting the underwriting guidelines
35 established by the pool; and
36 (4) paying the premiums required for the
37 coverage.

38 [Sections 2208.053-2208.100 reserved for expansion]

39 SUBCHAPTER C. BOARD OF TRUSTEES

40 Revised Law

41 Sec. 2208.101. ADMINISTRATION OF POOL; BOARD

1 MEMBERSHIP. (a) A board of trustees shall administer the pool.

2 (b) The board is composed of the members of the governing
3 board of an association that:

4 (1) on September 2, 1987, had been providing pooled
5 self-insurance in this state for more than five years; and

6 (2) has as the association's members the public
7 entities that entered into the written agreement under Section
8 2208.051.

9 (c) Board members shall represent members of the pool.
10 (V.T.I.C. Art. 21.49-11, Secs. 5(a), (c).)

11 Source Law

12 Sec. 5. (a) The members of the governing board
13 of an association that has been in operation providing
14 pooled self-insurance within this state for more than
15 five years on the effective date of this article and
16 that has as its members the public entities that
17 entered into the written agreement under Section 2 of
18 this article shall serve as the board of trustees of
19 the pool and shall administer the pool.

20 (c) Members of the board must represent members
21 of the pool.

22 Revisor's Note

23 Section 5(a), V.T.I.C. Article 21.49-11, refers
24 to "the effective date of this article." The revised
25 law substitutes a reference to "September 2, 1987,"
26 because that is the effective date of Article
27 21.49-11.

28 Revised Law

29 Sec. 2208.102. COMPENSATION. A board member is not
30 entitled to compensation for the member's service on the board.
31 (V.T.I.C. Art. 21.49-11, Sec. 5(b).)

32 Source Law

33 (b) Members of the board are not entitled to
34 compensation for their service on the board.

35 Revised Law

36 Sec. 2208.103. OFFICERS; MEETINGS. (a) Each individual
37 who serves as an officer of the governing board of the association
38 described by Section 2208.101(b) serves as an officer of the board.

1 (b) The board shall hold meetings at the call of the
2 presiding officer and at times established by the board's rules.

3 (c) A majority of the board members constitutes a quorum.
4 (V.T.I.C. Art. 21.49-11, Secs. 5(d), (e), (f).)

5 Source Law

6 (d) The persons who serve as officers of the
7 governing board of the association shall serve as
8 officers of the board.

9 (e) The board shall hold meetings at the call of
10 the chairman and at times established by its rules.

11 (f) A majority of the members of the board
12 constitutes a quorum.

13 Revisor's Note

14 Section 5(e), V.T.I.C. Article 21.49-11, refers
15 to the "chairman" of the board of trustees of the Texas
16 Public Entity Excess Insurance Pool. The revised law
17 substitutes "presiding officer" for that term because,
18 in context, the terms have the same meaning and
19 "presiding officer" is more commonly used and is
20 gender neutral.

21 Revised Law

22 Sec. 2208.104. GENERAL POWERS AND DUTIES OF BOARD. (a) In
23 addition to other duties provided by the plan of operation, the
24 board shall:

25 (1) approve contracts other than excess insurance
26 contracts issued to public entities by the pool;

27 (2) adopt premium rate schedules and policy forms for
28 the pool; and

29 (3) receive service of summons on behalf of the pool.

30 (b) The board may:

31 (1) adopt necessary rules, including rules to
32 implement this chapter;

33 (2) delegate specific responsibilities to the pool
34 manager; and

35 (3) amend the plan of operation to ensure the orderly
36 management and operation of the pool. (V.T.I.C. Art. 21.49-11,
37 Secs. 5(g) (part), (h), 10.)

Source Law

[Sec. 5]

(g) In addition to other duties provided by this article and the plan of operation, the board shall:

(1) approve contracts other than excess insurance contracts issued to public entities by the pool;

(2) consider and adopt premium rate schedules for the pool;

(3) consider and adopt policy forms for the pool;

(4) receive service of summons on behalf of the pool; and

(h) In addition to other authority provided by this article, the board may:

(1) adopt necessary rules;

(2) delegate specific responsibilities to the pool manager; and

(3) amend the plan of operation to assure the orderly management and operation of the pool.

Sec. 10. The board may adopt and amend rules to carry out this article.

Revisor's Note

(1) Section 5(g), V.T.I.C. Article 21.49-11, prescribes certain duties of the board of trustees of the Texas Public Entity Excess Insurance Pool that are "[i]n addition to other duties provided by this article," and Section 5(h), V.T.I.C. Article 21.49-11, grants the board certain powers that are "[i]n addition to other authority provided by this article." The revised law omits these provisions as unnecessary. It is a common rule of statutory construction that statutes are intended to be read cumulatively. A provision of Article 21.49-11, revised as this chapter, that grants additional powers to or prescribes additional duties for the board applies by its own terms without the necessity of additional references either specifically or generally in this chapter.

(2) Sections 5(g)(2) and (3), V.T.I.C. Article 21.49-11, require the board of trustees of the Texas Public Entity Excess Insurance Pool to "consider and adopt" premium rate schedules and policy forms,

respectively. The revised law omits the reference to "consider" as unnecessary because it is implied that the board must consider a rate schedule or policy form before adopting the rate schedule or policy form.

(3) Section 10, V.T.I.C. Article 21.49-11, authorizes the board of trustees of the Texas Public Entity Excess Insurance Pool to adopt and "amend" rules to carry out the article. The revised law omits as unnecessary the reference to amending rules because the authority to amend rules is implied in the authority to adopt rules.

Revised Law

Sec. 2208.105. IMMUNITY OF BOARD MEMBERS FROM CERTAIN
LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a public entity covered by the pool. (V.T.I.C. Art. 21.49-11, Sec. 5(i).)

Source Law

(i) A member of the board is not liable with respect to any claim or judgment for which coverage is provided by the pool or for any claim or judgment against a public entity covered by the pool against whom a claim is made.

[Sections 2208.106-2208.150 reserved for expansion]

SUBCHAPTER D. PLAN OF OPERATION

Revised Law

Sec. 2208.151. TIME FOR CREATION OF PLAN OF OPERATION. Not later than the 30th day after the date the pool is created, the board shall meet to prepare a detailed plan of operation for the pool. (V.T.I.C. Art. 21.49-11, Sec. 6(a).)

Source Law

Sec. 6. (a) Within 30 days after creation of the pool under Section 2(a) of this article, the board shall meet to prepare a detailed plan of operation for the pool.

1 Revised Law

2 Sec. 2208.152. CONTENTS OF PLAN OF OPERATION. (a) Subject
3 to the requirements of this chapter, the plan of operation must
4 include:

5 (1) the organizational structure of the pool, the
6 board's method of procedure and operation, and a summary of the
7 method for managing and operating the pool;

8 (2) a description of the financial arrangements
9 necessary to cover the initial expenses of the pool and estimates,
10 supported by statistical data, of the amounts of those
11 contributions or other financial arrangements;

12 (3) underwriting guidelines and procedures for
13 evaluating risks;

14 (4) procedures for purchasing reinsurance;

15 (5) methods, procedures, and guidelines for:

16 (A) establishing premium rates for and maximum
17 limits of excess coverage available from the pool; and

18 (B) managing and investing the fund;

19 (6) procedures for processing and paying claims;

20 (7) methods and procedures for defraying losses and
21 expenses of the pool; and

22 (8) guidelines for nonrenewal of coverage.

23 (b) The plan of operation may include any matter relating to
24 the organization and operation of the pool or to the pool's
25 finances. (V.T.I.C. Art. 21.49-11, Sec. 6(b).)

26 Source Law

27 (b) The plan of operation may include any
28 matters relating to the organization and operation of
29 the pool and the pool's finances. The plan must
30 include:

31 (1) the organizational structure of the
32 pool, the method of procedure and operation of the
33 board, and a summary of the method for managing and
34 operating the pool;

35 (2) a description of the financial
36 arrangements necessary to cover the initial expenses
37 of the pool and estimates supported by statistical
38 data of the amounts of those contributions or other
39 financial arrangements;

40 (3) underwriting guidelines and
41 procedures for the evaluation of risks;

1 (4) procedures for purchase of
2 reinsurance;
3 (5) methods, procedures, and guidelines
4 for establishing rates for premiums for and maximum
5 limits of excess coverage available from the pool;
6 (6) procedures for the processing and
7 payment of claims;
8 (7) methods and procedures for defraying
9 any losses and expenses of the pool;
10 (8) methods, procedures, and guidelines
11 for the management and investment of the fund; and
12 (9) guidelines for nonrenewal of coverage.

13 Revisor's Note

14 Section 6(b), V.T.I.C. Article 21.49-11,
15 specifies certain provisions that the Texas Public
16 Entity Excess Insurance Pool must include in the plan
17 of operation. For the convenience of the reader, the
18 revised law adds a reference to "the requirements of
19 this chapter" because other provisions of V.T.I.C.
20 Article 21.49-11, revised as this chapter, specify
21 additional requirements applicable to the provisions
22 of the plan of operation.

23 [Sections 2208.153-2208.200 reserved for expansion]

24 SUBCHAPTER E. OPERATION OF POOL

25 Revised Law

26 Sec. 2208.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
27 pool shall:

- 28 (1) issue insurance coverage to each public entity
29 entitled to coverage under this chapter;
30 (2) collect premiums for coverage issued or renewed by
31 the pool;
32 (3) process and pay valid claims; and
33 (4) maintain detailed data regarding the pool.

34 (b) The pool may:

- 35 (1) enter into contracts;
36 (2) purchase reinsurance;
37 (3) cancel or refuse to renew coverage; and
38 (4) perform any other act necessary to implement this
39 chapter, the plan of operation, or a rule adopted by the board.
40 (V.T.I.C. Art. 21.49-11, Sec. 11.)

Source Law

Sec. 11. (a) The pool shall:

- (1) issue insurance coverage to each public entity entitled to coverage under this article;
- (2) collect premiums for coverage issued or renewed by the pool;
- (3) process and pay valid claims; and
- (4) maintain detailed data regarding the pool.

(b) The pool may:

- (1) enter into contracts;
- (2) purchase reinsurance;
- (3) cancel or refuse to renew coverage;

and

- (4) perform any other acts necessary to carry out this article, the plan of operation, and the rules adopted by the board.

Revised Law

Sec. 2208.202. POOL MANAGER. (a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager is entitled to receive compensation as authorized by the board. (V.T.I.C. Art. 21.49-11, Secs. 5(g)(5), 7(a), (b).)

Source Law

[Sec. 5]
 (g) . . . the board shall:
 . . .
 (5) appoint and supervise the activities
 of the pool manager.

Sec. 7. (a) The board shall appoint a pool manager who shall serve at the pleasure of the board.

(b) The pool manager is entitled to receive the compensation authorized by the board.

Revised Law

Sec. 2208.203. GENERAL POWERS AND DUTIES OF POOL MANAGER.

(a) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties as directed by the board.

(b) In addition to any other duties provided by the board, the pool manager shall:

(1) receive and pass on applications for insurance coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare, and submit to the board for approval,

1 proposed policy forms for coverage from the pool.

2 (c) The pool manager may refuse to renew the coverage of a
3 public entity insured by the pool based on the guidelines included
4 in the plan of operation. (V.T.I.C. Art. 21.49-11, Secs. 7(c), (d)
5 (part), (e).)

6 Source Law

7 (c) The pool manager shall manage and conduct
8 the affairs of the pool under the general supervision
9 of the board and shall perform any other duties
10 directed by the board.

11 (d) In addition to any other duties provided by
12 this article or by the board, the pool manager shall:

13 (1) receive and pass on applications from
14 public entities for insurance coverage from the pool;

15 (2) negotiate contracts for the pool;

16 . . .
17 (5) prepare and submit to the board for
18 approval proposed policy forms for pool coverage.

19 (e) The pool manager may refuse to renew the
20 coverage of any public entity insured by the pool based
21 on the guidelines provided by the plan of operation.

22 Revisor's Note

23 Section 7(d), V.T.I.C. Article 21.49-11,
24 provides that the manager of the Texas Public Entity
25 Excess Insurance Pool has certain duties in addition
26 to any other duties provided "by this article,"
27 meaning V.T.I.C. Article 21.49-11, revised as this
28 chapter. The revised law omits the quoted language for
29 the reason stated in Revisor's Note (1) to Section
30 2208.104.

31 Revised Law

32 Sec. 2208.204. PERSONNEL. (a) The pool manager shall
33 employ or contract with persons necessary to assist the board and
34 the pool manager in implementing the powers and duties of the pool.

35 (b) The board must approve:

36 (1) the compensation paid to a pool employee; and

37 (2) a contract made with a person under this section.

38 (V.T.I.C. Art. 21.49-11, Secs. 8(a), (b).)

39 Source Law

40 Sec. 8. (a) The pool manager shall employ or
41 contract with persons necessary to assist the board
42 and pool manager in carrying out the powers and duties

1 of the pool.

2 (b) The board shall approve compensation paid to
3 employees of the pool and contracts made with other
4 persons under this section.

5 Revised Law

6 Sec. 2208.205. PERFORMANCE BOND AUTHORIZED. The board may
7 require an employee or a person with whom the pool manager contracts
8 under Section 2208.204 to execute a bond in an amount determined by
9 the board. The bond must be payable to the board and conditioned on
10 the faithful performance of the employee's or other person's duties
11 to the pool. (V.T.I.C. Art. 21.49-11, Sec. 8(c).)

12 Source Law

13 (c) The board may require any employee or person
14 with whom it contracts under this section to execute a
15 bond in an amount determined by the board, payable to
16 the board, and conditioned on the faithful performance
17 of the employee's or person's duties or
18 responsibilities to the pool.

19 Revisor's Note

20 Section 8(c), V.T.I.C. Article 21.49-11,
21 authorizes the board of trustees of the Texas Public
22 Entity Excess Insurance Pool to require an employee or
23 contract personnel to execute a bond conditioned on
24 the faithful performance of that person's "duties or
25 responsibilities" to the pool. The revised law omits
26 the reference to "responsibilities" as unnecessary
27 because, in context, "responsibility" is included in
28 the meaning of "duty."

29 Revised Law

30 Sec. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
31 CERTAIN LIABILITIES. An employee or a person with whom the pool
32 manager contracts under Section 2208.204 is not liable:

33 (1) with respect to a claim or judgment for which
34 coverage is provided by the pool; or

35 (2) for a claim or judgment against a public entity
36 covered by the pool. (V.T.I.C. Art. 21.49-11, Sec. 8(d).)

37 Source Law

38 (d) An employee or person with whom the pool has
39 contracted under this section is not liable with

1 respect to any claim or judgment for which coverage is
2 provided by the pool or for any claim or judgment
3 against any public entity covered by the pool against
4 whom a claim is made.

5 Revised Law

6 Sec. 2208.207. OFFICE; RECORDS. (a) The pool shall
7 maintain the pool's principal office in Austin, Texas.

8 (b) Records, files, and other documents and information
9 relating to the pool must be maintained in the pool's principal
10 office. (V.T.I.C. Art. 21.49-11, Sec. 9.)

11 Source Law

12 Sec. 9. (a) The pool shall maintain its
13 principal office in Austin, Texas.

14 (b) The records, files, and other documents and
15 information relating to the pool must be maintained in
16 the pool's principal office.

17 [Sections 2208.208-2208.250 reserved for expansion]

18 SUBCHAPTER F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND

19 Revised Law

20 Sec. 2208.251. FUND CREATION; MANAGEMENT. (a) On creation
21 of the pool, the board shall create the Texas public entity excess
22 insurance fund.

23 (b) The fund is composed of:

24 (1) premiums paid by public entities for coverage
25 provided by the pool;

26 (2) proceeds from bonds and other money received by
27 the pool to cover the expenses of the fund;

28 (3) investments of the fund and money earned from
29 those investments; and

30 (4) any other money received by the pool.

31 (c) The pool manager shall manage the fund under the general
32 supervision of the board. The fund manager, under the general
33 supervision of the board, shall manage and invest the money in the
34 fund in the manner provided by the plan of operation.

35 (d) Money earned by the investment of money in the fund must
36 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
37 21.49-11, Secs. 12(a), (b), (c), 13.)

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(b) The fund is composed of:

- (1) premiums paid by public entities for coverage by the pool;
- (2) proceeds from bonds and other money received by the pool to cover the expenses of the fund;
- (3) investments and money earned from investments of the fund; and
- (4) any other money received by the pool.

Sec. 13. (a) The fund manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

Revised Law

(b) Money in the fund may not be used to pay:

Source Law

(e) Money in the fund may not be used to pay punitive damages, fines or penalties for violation of a civil or criminal statute, or fines or penalties imposed for violation of an administrative rule or regulation or a public entity order or ordinance.

(f) Money for a claim may not be paid from the fund under excess insurance coverage unless and until all benefits payable under any other underlying policy or self-insurance covering the claim or judgment are exhausted.

1 Revisor's Note

2 Section 12(e), V.T.I.C. Article 21.49-11, refers
3 to "punitive damages, fines or penalties for violation
4 of a civil or criminal statute." The revised law omits
5 the reference to "civil or criminal" as unnecessary
6 because all statutes are either "civil" or "criminal."

7 Revised Law

8 Sec. 2208.253. DEPOSITORY. (a) The board may select one
9 or more banks to serve as depository for money in the fund.

10 (b) A depository bank must execute a bond or provide other
11 security before the pool manager may deposit fund money in the bank
12 in an amount that exceeds the maximum amount secured by the Federal
13 Deposit Insurance Corporation. The bond or other security must be
14 in an amount sufficient to secure the excess amount of the deposit.
15 (V.T.I.C. Art. 21.49-11, Sec. 12(g).)

16 Source Law

17 (g) The board may select one or more banks to
18 serve as depository for money of the fund. Before the
19 pool manager deposits fund money in a depository bank
20 in an amount that exceeds the maximum amount secured by
21 the Federal Deposit Insurance Corporation, the bank
22 must execute a bond or provide other security in an
23 amount sufficient to secure from loss the fund money
24 that exceeds the amount secured by the Federal Deposit
25 Insurance Corporation.

26 [Sections 2208.254-2208.300 reserved for expansion]

27 SUBCHAPTER G. POOL COVERAGE

28 Revised Law

29 Sec. 2208.301. SCOPE OF COVERAGE. (a) Except as provided
30 by Subsection (b), under the excess insurance coverage, the pool
31 shall pay any portion of a claim against a public entity and the
32 entity's officers and employees that:

- 33 (1) exceeds \$1 million; and
34 (2) is finally determined or settled or is included in
35 a final judgment of a court.

36 (b) The amount paid by the pool under this section may not
37 exceed the amount the board determines is actuarially sound for the
38 pool.

1 (c) The pool may participate in evaluating or defending a
2 claim made under the insurance coverage. (V.T.I.C. Art. 21.49-11,
3 Secs. 2(b), (c).)

4 Source Law

5 (b) Under the excess insurance coverage, the
6 pool shall pay that portion of a claim against a public
7 entity and its officers and employees that is finally
8 determined or settled or is included in a final
9 judgment of a court and that is in excess of \$1
10 million, but the amount paid by the pool may not be in
11 excess of the amount determined by the board to be
12 actuarially sound for the pool.

13 (c) Under the insurance coverage, the pool may
14 participate in the evaluation or defense of any claim.

15 Revised Law

16 Sec. 2208.302. BASIS OF COVERAGE. The pool may provide
17 excess insurance coverage on a claims-made basis or an occurrence
18 basis. (V.T.I.C. Art. 21.49-11, Sec. 16.)

19 Source Law

20 Sec. 16. Excess coverage provided by the pool
21 may be provided on a claims-made or an occurrence
22 basis.

23 Revised Law

24 Sec. 2208.303. PUNITIVE DAMAGES NOT COVERED. Excess
25 insurance coverage provided by the pool may not include coverage
26 for punitive damages. (V.T.I.C. Art. 21.49-11, Sec. 17.)

27 Source Law

28 Sec. 17. Excess coverage provided by the pool
29 may not provide coverage for punitive damages.

30 Revised Law

31 Sec. 2208.304. RATES AND LIMITS OF COVERAGE. (a) To
32 ensure that the pool is actuarially sound, the board shall:

33 (1) set the premium rates charged; and

34 (2) determine the maximum limits of insurance coverage
35 provided.

36 (b) The pool manager, for the board's consideration, shall:

37 (1) collect and compile statistical data relating to
38 the insurance coverage provided by the pool, including relevant
39 loss, expense, and premium data and other information;

40 (2) prepare the proposed premium rate schedules for

1 the approval of the board; and

2 (3) prepare the maximum limits of insurance coverage.

3 (c) The board shall periodically reexamine the rate
4 schedules and the maximum limits of insurance coverage as
5 conditions change. (V.T.I.C. Art. 21.49-11, Secs. 7(d) (part),
6 14.)

7 Source Law

8 [Sec. 7]

9 (d) . . . the pool manager shall:

10 . . .
11 (3) prepare premium rate schedules for the
12 approval of the board;

13 (4) collect and compile statistical data
14 relating to the insurance coverage provided by the
15 pool, including relevant loss, expense, and premium
16 data, and make that information available to the
17 board; and

18 Sec. 14. (a) The board shall determine the
19 rates for premiums that will be charged and the maximum
20 limits of coverage provided to assure that the pool is
21 actuarially sound.

22 (b) The pool manager shall prepare the
23 statistical data and other information and the
24 proposed rate schedules and maximum limits of
25 insurance coverage for consideration of the board.

26 (c) The board shall periodically reexamine the
27 rate schedules and the maximum limits of insurance
28 coverage as conditions change.

29 Revised Law

30 Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE
31 AUTHORIZED. A public entity may use the entity's money to pay any
32 contributions or premiums required by the pool to purchase excess
33 insurance coverage from the pool. (V.T.I.C. Art. 21.49-11, Sec.
34 4.)

35 Source Law

36 Sec. 4. A public entity purchasing excess
37 insurance coverage from the pool may use funds of the
38 public entity to pay any contributions or premiums
39 required by the pool for the coverage.

40 Revisor's Note

41 Section 4, V.T.I.C. Article 21.49-11, states that
42 a public entity may use the entity's "funds" to
43 purchase excess insurance coverage. The revised law
44 substitutes "money" for "funds" because, in context,
45 the terms are synonymous and the former is more

commonly used.

Revised Law

Sec. 2208.306. COVERAGE PERIOD. A public entity that accepts coverage provided by the pool shall maintain that coverage for at least 35 calendar months following the month in which the pool issued the coverage. (V.T.I.C. Art. 21.49-11, Sec. 15(a).)

Source Law

Sec. 15. (a) On accepting insurance coverage from the pool, a public entity is authorized to and shall maintain that coverage for a period not less than 35 calendar months following the month the coverage is issued.

Revised Law

Sec. 2208.307. NONRENEWAL OF COVERAGE. The pool may refuse to renew the insurance coverage of a public entity that fails to comply with the pool's underwriting or risk management guidelines. (V.T.I.C. Art. 21.49-11, Sec. 18(a).)

Source Law

Sec. 18. (a) The pool may refuse to renew the insurance coverage of any public entity that fails to comply with the pool's underwriting or risk management guidelines.

Revised Law

Sec. 2208.308. SUBSEQUENT COVERAGE. (a) A public entity that voluntarily discontinues insurance coverage provided by the pool may not subsequently obtain coverage from the pool for at least 36 calendar months following the month in which the entity discontinues the coverage.

(b) A public entity whose insurance coverage is not renewed by the pool is not eligible to subsequently apply for coverage during the 11 calendar months following the month in which the pool gives written notice of nonrenewal. (V.T.I.C. Art. 21.49-11, Secs. 15(b), 18(b).)

Source Law

[Sec. 15]

(b) A public entity that voluntarily discontinues insurance coverage in the pool may not again obtain coverage from the pool for at least 36 calendar months following the month in which the coverage was discontinued.

[Sec. 18]

(b) A public entity whose insurance coverage is not renewed by the pool is not eligible to apply for new coverage during the 11 calendar months beginning after the month in which the pool gave written notice that it would not renew the coverage.

Revised Law

Sec. 2208.309. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The public entity incurring the original liability shall pay the remaining amount that is due and unpaid to a person who receives a prorated payment under this section. (V.T.I.C. Art. 21.49-11, Sec. 19.)

Source Law

Sec. 19. (a) If money in the fund will be exhausted by payment of all final and settled claims and final judgments during the fiscal year, the amount paid by the pool to each person having a claim or judgment shall be prorated, with each person receiving an amount that is equal to the percentage the amount owed to him by the pool bears to the total amount owed, outstanding, and payable by the pool.

(b) The remaining amount that is due and unpaid to a person who receives prorated payment under Subsection (a) of this section must be paid by the member city incurring the original liability.

CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2209.001. DEFINITIONS 1368

Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF
INSURANCE 1369

Sec. 2209.003. DEPARTMENT AND COMMISSIONER SUPERVISION . . . 1370

[Sections 2209.004-2209.050 reserved for expansion]

1 SUBCHAPTER B. CREATION OF POOL

2 Sec. 2209.051. CREATION OF POOL 1371

3 Sec. 2209.052. PARTICIPATION IN POOL 1371

4 Sec. 2209.053. SELECTION OF TEMPORARY BOARD 1372

5 [Sections 2209.054-2209.100 reserved for expansion]

6 SUBCHAPTER C. PLAN OF OPERATION

7 Sec. 2209.101. TIME FOR CREATION OF PLAN OF OPERATION 1372

8 Sec. 2209.102. CONTENTS OF PLAN OF OPERATION 1372

9 Sec. 2209.103. APPROVAL OF PLAN 1375

10 [Sections 2209.104-2209.150 reserved for expansion]

11 SUBCHAPTER D. BOARD OF TRUSTEES

12 Sec. 2209.151. GOVERNANCE OF POOL; BOARD MEMBERSHIP 1375

13 Sec. 2209.152. TERMS; VACANCY 1377

14 Sec. 2209.153. PERFORMANCE BOND REQUIRED 1377

15 Sec. 2209.154. COMPENSATION 1377

16 Sec. 2209.155. OFFICERS; MEETINGS 1377

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13 CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Revised Law

16 Sec. 2209.001. DEFINITIONS. In this chapter:

17 (1) "Board" means the board of trustees of the pool.

18 (2) "Fund" means the Texas nonprofit organizations

19 liability fund.

20 (3) "Nonprofit organization" means an organization

21 that is exempt from federal income taxation under Section 501(a),

22 Internal Revenue Code of 1986, by being described as an exempt

23 organization by Section 501(c)(3) or (4), Internal Revenue Code of

24 1986.

25 (4) "Pool" means the Texas Nonprofit Organizations

26 Liability Pool. (V.T.I.C. Art. 21.49-14, Sec. 1.)

27 Source Law

28 Art. 21.49-14

29 Sec. 1. In this article:

30 (1) "Pool" means the Texas Nonprofit

31 Organizations Liability Pool.

32 (2) "Fund" means the Texas nonprofit

33 organizations liability fund.

34 (3) "Board" means the board of trustees of

35 the pool.

36 (4) "Nonprofit organization" means an

37 organization that is exempt under Section 501(c)(3) or

38 (4), Internal Revenue Code of 1986.

1 Revisor's Note

2 Section 1(4), V.T.I.C. Article 21.49-14, refers
3 to an organization that is "exempt under Section
4 501(c)(3) or (4), Internal Revenue Code of 1986." The
5 revised law substitutes "exempt from federal income
6 taxation under Section 501(a), Internal Revenue Code
7 of 1986, by being described as an exempt organization
8 by Section 501(c)(3) or (4), Internal Revenue Code of
9 1986" for the quoted language because it more
10 accurately reflects the structure of the applicable
11 federal income tax exemption.

12 Revised Law

13 Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF
14 INSURANCE. (a) Except as provided by this section and Section
15 2209.003(b), the pool is not engaged in the business of insurance
16 under this code or other laws of this state, and this code,
17 including Chapter 462, and other insurance laws of this state do not
18 apply to the pool.

19 (b) The pool is subject to:

20 (1) this chapter;

21 (2) the requirements of this code or the commissioner
22 relating to reporting liability claims data; and

23 (3) the requirements of Chapter 2251 and Article
24 5.13-2 relating to making, filing, and approving rates. (V.T.I.C.
25 Art. 21.49-14, Secs. 21(a), (b) (part), (d).)

26 Source Law

27 Sec. 21. (a) Except as provided by Subsection
28 (c) of this section, the pool is not engaged in the
29 business of insurance under this code and other laws of
30 this state, and this code and other insurance laws of
31 this state do not apply to the pool.

32 (b) In addition to this article, the pool is
33 subject to:

34 (1) the requirement of this code and the
35 State Board of Insurance relating to reporting
36 liability claims data;

37 (2) the requirements of Subchapter B,
38 Chapter 5, of this code relating to the making, filing,
39 and approval of rates; and

40

1 (d) Article 21.28-C of this code does not apply
2 to the pool.

3 Revisor's Note

4 (1) Section 21(b)(1), V.T.I.C. Article
5 21.49-14, refers to the "State Board of Insurance."
6 Chapter 685, Acts of the 73rd Legislature, Regular
7 Session, 1993, abolished the State Board of Insurance
8 and transferred its functions to the commissioner of
9 insurance and the Texas Department of Insurance.
10 Throughout this chapter, references to the board have
11 been changed appropriately.

12 (2) Section 21(b)(2), V.T.I.C. Article
13 21.49-14, refers to the requirements of Subchapter B,
14 V.T.I.C. Chapter 5, relating to making, filing, and
15 approving rates. That subchapter has been revised in
16 part in various titles of this code. The relevant
17 provisions of Subchapter B, Chapter 5, that regulate
18 making, filing, and approving rates are in V.T.I.C.
19 Article 5.13-2, revised in part in Chapter 2251 of this
20 code. For that reason, the revised law substitutes a
21 reference to "Chapter 2251 and Article 5.13-2" for the
22 reference to "Subchapter B, Chapter 5."

23 Revised Law

24 Sec. 2209.003. DEPARTMENT AND COMMISSIONER
25 SUPERVISION. (a) The pool is subject to the department's
26 continuing supervision relating to the pool's solvency.

27 (b) The commissioner may set certain minimum requirements
28 to ensure the capability of the pool to satisfy the pool's
29 obligations.

30 (c) The department shall charge the pool reasonable fees for
31 services performed by the department under this chapter. (V.T.I.C.
32 Art. 21.49-14, Secs. 21(b) (part), (c), (e).)

33 Source Law

34 (b) . . . the pool is subject to:

35 . . .
36 (3) the continuing supervision of the

1 State Board of Insurance relating to the pool's
2 solvency.

3 (c) The State Board of Insurance may set certain
4 minimum requirements to assure the capability of the
5 pool to satisfy its obligations.

6 (e) The State Board of Insurance shall charge
7 the pool reasonable fees for services performed by the
8 board pursuant to this Act.

9 [Sections 2209.004-2209.050 reserved for expansion]

10 SUBCHAPTER B. CREATION OF POOL

11 Revised Law

12 Sec. 2209.051. CREATION OF POOL. (a) The Texas Nonprofit
13 Organizations Liability Pool is created on the written agreement of
14 the chief executive officers of 15 or more nonprofit organizations.

15 (b) The pool provides primary and excess liability
16 insurance coverage as provided by this chapter. (V.T.I.C. Art.
17 21.49-14, Sec. 2.)

18 Source Law

19 Sec. 2. On written agreement of the chief
20 executive officers of not fewer than 15 nonprofit
21 organizations, the Texas Nonprofit Organizations
22 Liability Pool is created to provide primary and
23 excess liability insurance coverage as provided by
24 this article.

25 Revised Law

26 Sec. 2209.052. PARTICIPATION IN POOL. A nonprofit
27 organization is entitled to coverage from the pool if the
28 organization:

- 29 (1) submits a complete application;
30 (2) provides other information required by the pool;
31 (3) meets the underwriting standards established by
32 the pool; and
33 (4) pays the premiums required for the coverage.
34 (V.T.I.C. Art. 21.49-14, Sec. 4.)

35 Source Law

36 Sec. 4. A nonprofit organization is entitled to
37 coverage from the pool on:

- 38 (1) submitting a complete application;
39 (2) providing any other information
40 required by the pool;
41 (3) meeting the underwriting standards
42 established by the pool; and
43 (4) paying the premiums required for the
44 coverage.

1 Revised Law

2 Sec. 2209.053. SELECTION OF TEMPORARY BOARD. At the time
3 the chief executive officers of the nonprofit organizations enter
4 into the written agreement under Section 2209.051, the officers
5 shall select nine individuals to:

6 (1) serve as the temporary board; and

7 (2) draft the plan of operation for the pool.

8 (V.T.I.C. Art. 21.49-14, Sec. 5(a).)

9 Source Law

10 Sec. 5. (a) At the time the chief executive
11 officers of the nonprofit organizations enter into the
12 written agreement under Section 2 of this article, the
13 chief executive officers shall select nine persons to
14 serve as a temporary board to draft the plan of
15 operation for the pool.

16 [Sections 2209.054-2209.100 reserved for expansion]

17 SUBCHAPTER C. PLAN OF OPERATION

18 Revised Law

19 Sec. 2209.101. TIME FOR CREATION OF PLAN OF
20 OPERATION. (a) Not later than the 30th day after the date the
21 temporary board is selected, the temporary board shall meet to
22 prepare a detailed plan of operation for the pool.

23 (b) The temporary board shall complete and adopt the plan of
24 operation not later than the 90th day after the date the temporary
25 board is selected. (V.T.I.C. Art. 21.49-14, Secs. 5(b), (d).)

26 Source Law

27 (b) Within 30 days after selection, the members
28 of the temporary board shall meet to prepare a detailed
29 plan of operation for the pool.

30 (d) The temporary board shall complete and adopt
31 the plan of operation within 90 days after the date of
32 the appointment of the temporary board.

33 Revised Law

34 Sec. 2209.102. CONTENTS OF PLAN OF OPERATION. (a) Subject
35 to the requirements of this chapter, the plan of operation must
36 include:

37 (1) the organizational structure of the pool,
38 including:

1 (A) the method of selecting the board;
2 (B) the board's method of procedure and
3 operation; and
4 (C) a summary of the method for managing and
5 operating the pool;

6 (2) a description of the contributions and other
7 financial arrangements necessary to cover the initial expenses of
8 the pool and estimates, supported by statistical data, of the
9 amounts of those contributions or other financial arrangements;

10 (3) underwriting standards and procedures for
11 evaluating risks, including a requirement that all participants in
12 the pool receive ongoing training in the methods of controlling
13 liability losses;

14 (4) procedures for purchasing reinsurance;

15 (5) methods, procedures, and guidelines for:

16 (A) establishing premium rates for and maximum
17 limits of excess coverage available from the pool;

18 (B) negotiating and paying settlements,
19 defending claims, and paying judgments; and

20 (C) managing and investing the fund;

21 (6) procedures for processing and paying claims;

22 (7) methods and procedures for defraying losses and
23 expenses of the pool; and

24 (8) guidelines for nonrenewal of coverage.

25 (b) The plan of operation may include any matter relating to
26 the organization and operation of the pool or to the pool's
27 finances. (V.T.I.C. Art. 21.49-14, Sec. 5(c).)

28 Source Law

29 (c) The plan of operation may include any
30 matters relating to the organization and operation of
31 the pool and the pool's finances. The plan must
32 include:

33 (1) the organizational structure of the
34 pool, including the method of selection of the board,
35 the method of procedure and operation of the board, and
36 a summary of the method for managing and operating the
37 pool;

38 (2) a description of the contributions and
39 other financial arrangements necessary to cover the

1 initial expenses of the pool and estimates supported
2 by statistical data of the amounts of those
3 contributions or other financial arrangements;

4 (3) underwriting standards and procedures
5 for the evaluation of risks; provided that such
6 standards shall include, but not be limited to, the
7 requirement that all participants in the pool receive
8 on-going training in the methods of controlling
9 liability losses;

10 (4) procedures for purchase of
11 reinsurance;

12 (5) methods, procedures, and guidelines
13 for establishing rates for premiums for and maximum
14 limits of excess coverage available from the pool;

15 (6) methods, procedures, and guidelines
16 for negotiating and paying settlements, defense of
17 claims, and paying judgments;

18 (7) procedures for the processing and
19 payment of claims;

20 (8) methods and procedures for defraying
21 any losses and expenses of the pool;

22 (9) methods, procedures, and guidelines
23 for the management and investment of the fund; and

24 (10) guidelines for nonrenewal of
25 coverage.

26 Revisor's Note

27 (1) Section 5(c), V.T.I.C. Article 21.49-14,
28 specifies certain provisions that the Texas Nonprofit
29 Organizations Liability Pool must include in the plan
30 of operation. For the convenience of the reader, the
31 revised law adds a reference to "the requirements of
32 this chapter" because other provisions of V.T.I.C.
33 Article 21.49-14, revised in this chapter, specify
34 additional requirements applicable to the provisions
35 of the plan of operation.

36 (2) Section 5(c)(3), V.T.I.C. Article 21.49-14,
37 requires that underwriting standards and procedures
38 for evaluating risks "include, but not be limited to,"
39 the requirement that participants in the Texas
40 Nonprofit Organizations Liability Pool receive
41 certain training. The revised law omits "but not be
42 limited to" as unnecessary because Section
43 311.005(13), Government Code (Code Construction Act),
44 and Section 312.011(19), Government Code, provide that
45 "includes" and "including" are terms of enlargement
46 and not of limitation and do not create a presumption

1 that components not expressed are excluded. Those
2 definitions apply to the revised law.

3 Revised Law

4 Sec. 2209.103. APPROVAL OF PLAN. (a) On completion of the
5 plan of operation, the temporary board shall submit the plan to the
6 department for examination, suggested changes, and final approval.

7 (b) The department shall approve the plan of operation only
8 if the department is satisfied that the pool is able and will
9 continue to be able to pay valid claims made against the pool.
10 (V.T.I.C. Art. 21.49-14, Sec. 5(e).)

11 Source Law

12 (e) On completion of the plan of operation, the
13 temporary board shall submit the plan to the State
14 Board of Insurance for examination, suggested changes,
15 and final approval. The State Board of Insurance shall
16 approve the plan of operation under this subsection
17 only if it is satisfied that the pool has and will
18 continue to possess the ability to pay valid claims
19 made against it.

20 [Sections 2209.104-2209.150 reserved for expansion]

21 SUBCHAPTER D. BOARD OF TRUSTEES

22 Revised Law

23 Sec. 2209.151. GOVERNANCE OF POOL; BOARD MEMBERSHIP. (a)
24 The pool is governed by a board of trustees composed of nine members
25 selected as provided by the plan of operation.

26 (b) Not later than the 15th day after the date the
27 department approves the plan of operation, the initial regular
28 board must be selected as provided by the plan of operation. The
29 members of the initial regular board shall take office not later
30 than the 30th day after the date the plan of operation is adopted.

31 (c) Four board members must be representatives of the
32 public. A public representative may not:

33 (1) be an officer, director, or employee of an
34 insurer, insurance agency, agent, broker, solicitor, adjuster, or
35 other business entity regulated by the department;

36 (2) be a person required to register under Chapter
37 305, Government Code; or

1 (3) be related to a person described by Subdivision
2 (1) or (2) within the second degree by consanguinity or affinity.
3 (V.T.I.C. Art. 21.49-14, Secs. 5(g), 6(a).)

4 Source Law

5 [Sec. 5]

6 (g) Within 15 days after the day on which the
7 plan of operation is approved by the State Board of
8 Insurance, the first board must be selected as
9 provided by the plan of operation. The members of the
10 first board shall take office not later than the 30th
11 day after the date of the adoption of the plan of
12 operation.

13 Sec. 6. (a) The pool is governed by a board of
14 nine trustees selected as provided by the plan of
15 operation. Four of the members of the board of trustees
16 shall be representatives of the general public. A
17 public representative may not be:

18 (1) an officer, director, or employee of
19 an insurance company, insurance agency, agent, broker,
20 solicitor, adjuster, or any other business entity
21 regulated by the State Board of Insurance;

22 (2) a person required to register with the
23 secretary of state under Chapter 305, Government Code;
24 or

25 (3) related to a person described by
26 Subdivision (1) or (2) of this subsection within the
27 second degree of affinity or consanguinity.

28 Revisor's Note

29 (1) Section 6(a), V.T.I.C. Article 21.49-14,
30 provides that the Texas Nonprofit Organizations
31 Liability Pool is governed by a board of nine
32 "trustees." Throughout this chapter, the revised law
33 substitutes "members" for "trustees" for consistency
34 and because "member" is more commonly used in this
35 chapter to describe a person serving on the board of
36 trustees.

37 (2) Section 6(a)(2), V.T.I.C. Article 21.49-14,
38 refers to a person "required to register with the
39 secretary of state under Chapter 305, Government
40 Code." The revised law omits the reference to the
41 secretary of state because under Chapter 304, Acts of
42 the 72nd Legislature, Regular Session, 1991, a person
43 formerly required to register with the secretary of
44 state must now register with the Texas Ethics
45 Commission under Chapter 305, Government Code. A

1 reference to the Texas Ethics Commission is
2 unnecessary because Chapter 305, Government Code,
3 provides for registration only with that agency.

4 Revised Law

5 Sec. 2209.152. TERMS; VACANCY. (a) Board members serve
6 staggered two-year terms. The terms of four members expire in
7 odd-numbered years as provided by the plan of operation.

8 (b) A vacancy on the board shall be filled as provided by the
9 plan of operation. (V.T.I.C. Art. 21.49-14, Secs. 6(b), (c).)

10 Source Law

11 (b) Members of the board serve for staggered
12 terms of two years with the terms of four trustees
13 expiring in odd-numbered years as provided by the plan
14 of operation.

15 (c) A vacancy on the board shall be filled as
16 provided by the plan of operation.

17 Revised Law

18 Sec. 2209.153. PERFORMANCE BOND REQUIRED. (a) Each board
19 member shall execute a bond in the amount required by the plan of
20 operation. The bond must be payable to the pool and conditioned on
21 the faithful performance of the member's duties.

22 (b) The pool shall pay the cost of the bond executed under
23 this section. (V.T.I.C. Art. 21.49-14, Sec. 6(d).)

24 Source Law

25 (d) Each member of the board shall execute a
26 bond in the amount required by the plan of operation
27 payable to the pool and conditioned on the faithful
28 performance of his duties. The pool shall pay the cost
29 of the bond.

30 Revised Law

31 Sec. 2209.154. COMPENSATION. A board member is not
32 entitled to compensation for the member's service on the board.
33 (V.T.I.C. Art. 21.49-14, Sec. 6(e).)

34 Source Law

35 (e) Members of the board are not entitled to
36 compensation for their service on the board.

37 Revised Law

38 Sec. 2209.155. OFFICERS; MEETINGS. (a) The board shall
39 select from the board members a presiding officer, an assistant

1 presiding officer, and a secretary, who serve one-year terms that
2 expire as provided by the plan of operation.

3 (b) The board shall hold meetings at the call of the
4 presiding officer and at times established by the board's rules.

5 (c) A majority of the board members constitutes a quorum.
6 (V.T.I.C. Art. 21.49-14, Secs. 6(f), (g), (h).)

7 Source Law

8 (f) The board shall select from its membership
9 persons to serve as chairman, vice-chairman, and
10 secretary. The persons selected serve in that
11 capacity for terms of one year that expire as provided
12 by the plan of operation.

13 (g) The board shall hold meetings at the call of
14 the chairman and at times established by its rules.

15 (h) A majority of the members of the board
16 constitutes a quorum.

17 Revisor's Note

18 Section 6(f), V.T.I.C. Article 21.49-14, refers
19 to the "chairman" and "vice-chairman" of the board of
20 trustees of the Texas Nonprofit Organizations
21 Liability Pool. The revised law substitutes
22 "presiding officer" and "assistant presiding officer"
23 for those terms in this section and throughout this
24 chapter because, in context, the terms have the same
25 meaning and "presiding officer" and "assistant
26 presiding officer" are more commonly used and are
27 gender-neutral.

28 Revised Law

29 Sec. 2209.156. GENERAL POWERS AND DUTIES OF BOARD. (a) In
30 addition to other duties provided by the plan of operation, the
31 board shall:

32 (1) approve contracts other than insurance contracts
33 issued by the pool to nonprofit organizations;

34 (2) adopt premium rate schedules and policy forms for
35 the pool; and

36 (3) receive service of summons on behalf of the pool.

37 (b) The board may:

38 (1) adopt necessary rules, including rules to

1 implement this chapter;

2 (2) delegate specific responsibilities to the pool
3 manager; and

4 (3) with the department's approval, amend the plan of
5 operation to ensure the orderly management and operation of the
6 pool. (V.T.I.C. Art. 21.49-14, Secs. 5(f) (part), 6(i) (part),
7 (j), 10.)

8 Source Law

9 [Sec. 5]

10 (f) The plan of operation may be amended by the
11 board with the approval of the State Board of
12 Insurance;

13 [Sec. 6]

14 (i) In addition to other duties provided by this
15 article and the plan of operation, the board shall:

16 (1) approve contracts other than insurance
17 contracts issued to nonprofit organizations by the
18 pool;

19 (2) consider and adopt premium rate
20 schedules for the pool;

21 (3) consider and adopt policy forms for
22 the pool;

23 (4) receive service of summons on behalf
24 of the pool; and

25

26 (j) In addition to other authority provided by
27 this article, the board may:

28 (1) adopt necessary rules;

29 (2) delegate specific responsibilities to
30 the pool manager; and

31 (3) amend the plan of operation to assure
32 the orderly management and operation of the pool.

33 Sec. 10. The board may adopt and amend rules to
34 carry out this article.

35 Revisor's Note

36 (1) Section 6(i), V.T.I.C. Article 21.49-14,
37 prescribes certain duties of the board of trustees of
38 the Texas Nonprofit Organizations Liability Pool that
39 are "[i]n addition to other duties provided by this
40 article," and Section 6(j), V.T.I.C. Article 21.49-14,
41 grants the board certain powers that are "[i]n
42 addition to other authority provided by this article."
43 The revised law omits these provisions as unnecessary.
44 It is a common rule of statutory construction that
45 statutes are intended to be read cumulatively. A

1 provision of Article 21.49-14, revised as this
2 chapter, that grants additional powers to or
3 prescribes additional duties for the board applies by
4 its own terms without the necessity of additional
5 references either specifically or generally in this
6 chapter.

7 (2) Sections 6(i)(2) and (3), V.T.I.C. Article
8 21.49-14, require the board of trustees of the Texas
9 Nonprofit Organizations Liability Pool to "consider
10 and adopt" premium rate schedules and policy forms,
11 respectively. The revised law omits the reference to
12 "consider" as unnecessary because it is implied that
13 the board must consider a rate schedule or policy form
14 before adopting the rate schedule or policy form.

15 (3) Section 10, V.T.I.C. Article 21.49-14,
16 authorizes the board of trustees of the Texas
17 Nonprofit Organizations Liability Pool to adopt and
18 "amend" rules to carry out the article. The revised
19 law omits as unnecessary the reference to amending
20 rules because the authority to amend rules is implied
21 in the authority to adopt rules.

22 (4) Section 5(f), V.T.I.C. Article 21.49-14,
23 requires the amended plan of operation to require
24 participants in the Texas Nonprofit Organizations
25 Liability Pool to receive certain training. The
26 revised law omits this provision as duplicative of
27 Section 5(c)(3), V.T.I.C. Article 21.49-14, revised in
28 this chapter as Section 2209.102(a)(3). The omitted
29 law reads:

30 (f) . . . provided that such plan
31 shall maintain the requirement that all
32 participants in the pool receive on-going
33 training in the methods of controlling
34 liability losses.

35 Revised Law

36 Sec. 2209.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN

1 LIABILITIES. A board member is not liable:

2 (1) with respect to a claim or judgment for which
3 coverage is provided by the pool; or

4 (2) for a claim or judgment against a nonprofit
5 organization covered by the pool. (V.T.I.C. Art. 21.49-14, Sec.
6 6(k).)

7 Source Law

8 (k) A member of the board is not liable with
9 respect to any claim or judgment for which coverage is
10 provided by the pool or for a claim or judgment against
11 a nonprofit organization covered by the pool against
12 whom a claim is made.

13 [Sections 2209.158-2209.200 reserved for expansion]

14 SUBCHAPTER E. OPERATION OF POOL

15 Revised Law

16 Sec. 2209.201. GENERAL POWERS AND DUTIES OF POOL. (a) The
17 pool shall:

18 (1) issue primary and excess liability coverage to
19 each nonprofit organization entitled to coverage under this
20 chapter;

21 (2) collect premiums for coverage issued or renewed by
22 the pool;

23 (3) process and pay valid claims;

24 (4) maintain detailed data regarding the pool; and

25 (5) establish a plan to conduct loss control training
26 or contract with an outside organization or individual to establish
27 ongoing training and facilities inspection programs designed to
28 reduce the potential liability losses of pool participants.

29 (b) The pool may:

30 (1) enter into contracts;

31 (2) purchase reinsurance;

32 (3) cancel or refuse to renew coverage; and

33 (4) perform any other act necessary to carry out this
34 chapter, the plan of operation, or a rule adopted by the board.
35 (V.T.I.C. Art. 21.49-14, Sec. 11.)

Source Law

Sec. 11. (a) The pool shall:

(1) issue primary and excess liability coverage to each nonprofit organization entitled to coverage under this article;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims;

(4) maintain detailed data regarding the pool; and

(5) establish a plan to conduct loss control training or contract with an outside organization or individual to establish on-going training and facilities inspection programs designed to reduce the potential liability losses of participants in the pool.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage;

and

(4) perform any other acts necessary to carry out this article, the plan of operation, and the rules adopted by the board.

Revised Law

Sec. 2209.202. POOL MANAGER; PERFORMANCE BOND REQUIRED.

(a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager is entitled to receive compensation as authorized by the board.

(c) The pool manager shall execute a bond in the amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the pool manager's duties.

(d) The pool shall pay the cost of the bond executed under this section. (V.T.I.C. Art. 21.49-14, Secs. 6(i) (part), 7(a), (b), (c).)

Source Law

[Sec. 6]

(i) . . . the board shall:

• • •

(5) appoint and supervise the activities of the pool manager.

Sec. 7. (a) The board shall appoint a pool manager who shall serve at the pleasure of the board.

(b) The pool manager is entitled to receive the compensation authorized by the board.

(c) The pool manager shall execute a bond in the amount determined by the board, payable to the pool,

1 conditioned on the faithful performance of his duties.
2 The pool shall pay the cost of the bond.

3 Revised Law

4 Sec. 2209.203. GENERAL POWERS AND DUTIES OF POOL
5 MANAGER. (a) The pool manager shall manage and conduct the
6 affairs of the pool under the general supervision of the board and
7 shall perform any other duties as directed by the board.

8 (b) In addition to any other duties provided by the board,
9 the pool manager shall:

10 (1) receive and pass on applications for liability
11 coverage from the pool;

12 (2) negotiate contracts for the pool; and

13 (3) prepare, and submit to the board for approval,
14 proposed policy forms for coverage from the pool.

15 (c) The pool manager may refuse to renew the coverage of a
16 nonprofit organization insured by the pool based on the guidelines
17 included in the plan of operation. (V.T.I.C. Art. 21.49-14, Secs.
18 7(d), (e) (part), (f).)

19 Source Law

20 (d) The pool manager shall manage and conduct
21 the affairs of the pool under the general supervision
22 of the board and shall perform any other duties
23 directed by the board.

24 (e) In addition to any other duties provided by
25 this article or by the board, the pool manager shall:

26 (1) receive and pass on applications from
27 nonprofit organizations for liability coverage from
28 the pool;

29 (2) negotiate contracts for the pool;

30 . . .
31 (5) prepare and submit to the board for
32 approval proposed policy forms for pool coverage.

33 (f) The pool manager may refuse to renew the
34 coverage of any nonprofit organization insured by the
35 pool based on the guidelines provided by the plan of
36 operation.

37 Revisor's Note

38 Section 7(e), V.T.I.C. Article 21.49-14,
39 provides that the manager of the Texas Nonprofit
40 Organizations Liability Pool has certain duties in
41 addition to any other duties provided "by this
42 article," meaning V.T.I.C. Article 21.49-14, revised
43 as this chapter. The revised law omits the quoted

1 language for the reason stated in Revisor's Note (1) to
2 Section 2209.156.

3 Revised Law

4 Sec. 2209.204. PERSONNEL. (a) The pool manager shall
5 employ or contract with persons necessary to assist the board and
6 the pool manager in carrying out the powers and duties of the pool.

7 (b) The board must approve:

8 (1) the compensation paid to a pool employee; and

9 (2) a contract made with a person under this section.

10 (V.T.I.C. Art. 21.49-14, Secs. 8(a), (b).)

11 Source Law

12 Sec. 8. (a) The pool manager shall employ or
13 contract with persons necessary to assist the board
14 and pool manager in carrying out the powers and duties
15 of the pool.

16 (b) The board shall approve compensation paid to
17 employees of the pool and contracts made with other
18 persons under this section.

19 Revised Law

20 Sec. 2209.205. PERFORMANCE BOND AUTHORIZED. The board may
21 require an employee or a person with whom the pool manager contracts
22 under Section 2209.204 to execute a bond in an amount determined by
23 the board. The bond must be payable to the board and conditioned on
24 the faithful performance of the employee's or other person's duties
25 to the pool. (V.T.I.C. Art. 21.49-14, Sec. 8(c).)

26 Source Law

27 (c) The board may require any employee or person
28 with whom it contracts under this section to execute a
29 bond in an amount determined by the board, payable to
30 the board, and conditioned on the faithful performance
31 of the employee's or person's duties or
32 responsibilities to the pool.

33 Revisor's Note

34 Section 8(c), V.T.I.C. Article 21.49-14,
35 authorizes the board of trustees of the Texas
36 Nonprofit Organizations Liability Pool to require an
37 employee or contract personnel to execute a bond
38 conditioned on the faithful performance of that
39 person's "duties or responsibilities" to the pool. The

1 revised law omits the reference to "responsibilities"
2 as unnecessary because, in context, "responsibility"
3 is included within the meaning of "duty."

4 Revised Law

5 Sec. 2209.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM
6 CERTAIN LIABILITIES. An employee or a person with whom the pool
7 manager contracts under Section 2209.204 is not liable:

8 (1) with respect to a claim or judgment for which
9 coverage is provided by the pool; or

10 (2) for a claim or judgment against a nonprofit
11 organization covered by the pool. (V.T.I.C. Art. 21.49-14, Sec.
12 8(d).)

13 Source Law

14 (d) An employee or person with whom the pool has
15 contracted under this section is not liable with
16 respect to any claim or judgment for which coverage is
17 provided by the pool or for any claim or judgment
18 against a nonprofit organization covered by the pool
19 against whom a claim is made.

20 Revised Law

21 Sec. 2209.207. RECORDS. Records, files, and other
22 documents and information relating to the pool must be maintained
23 in the pool's principal office. (V.T.I.C. Art. 21.49-14, Sec. 9.)

24 Source Law

25 Sec. 9. The records, files, and other documents
26 and information relating to the pool must be
27 maintained in the pool's principal office.

28 [Sections 2209.208-2209.250 reserved for expansion]

29 SUBCHAPTER F. TEXAS NONPROFIT ORGANIZATIONS LIABILITY FUND

30 Revised Law

31 Sec. 2209.251. FUND CREATION; MANAGEMENT. (a) On creation
32 of the pool, the initial regular board shall create the Texas
33 nonprofit organizations liability fund.

34 (b) The fund is composed of:

35 (1) premiums paid by nonprofit organizations for
36 coverage provided by the pool;

37 (2) contributions and other money received by the pool

1 to cover the initial expenses of the fund;

2 (3) investments of the fund and money earned from
3 those investments; and

4 (4) any other money received by the pool.

5 (c) The pool manager shall manage the fund under the general
6 supervision of the board. The fund manager, under the general
7 supervision of the board, shall manage and invest the money in the
8 fund in the manner provided by the plan of operation.

9 (d) Money earned by the investment of money in the fund must
10 be deposited in the fund or reinvested for the fund. (V.T.I.C. Art.
11 21.49-14, Secs. 12(a), (b), (c), 13.)

12 Source Law

13 Sec. 12. (a) On creation of the pool, the first
14 board shall create the Texas nonprofit organizations
15 liability fund.

16 (b) The fund is composed of:

17 (1) premiums paid by nonprofit
18 organizations for coverage by the pool;

19 (2) contributions and other money received
20 by the pool to cover the initial expenses of the fund;

21 (3) investments and money earned from
22 investments of the fund; and

23 (4) any other money received by the pool.

24 (c) The pool manager shall manage the fund under
25 the general supervision of the board.

26 Sec. 13. (a) The fund manager, under the
27 general supervision of the board, shall manage and
28 invest the money in the fund in the manner provided by
29 the plan of operation.

30 (b) Money earned by investment of money in the
31 fund must be deposited in the fund or reinvested for
32 the fund.

33 Revised Law

34 Sec. 2209.252. CONTRIBUTIONS. The board shall determine
35 the amount of any contributions necessary to meet the initial
36 expenses of the pool. The board shall make this determination based
37 on the data provided by the plan of operation. (V.T.I.C. Art.
38 21.49-14, Sec. 14.)

39 Source Law

40 Sec. 14. The board shall determine the amount of
41 any contributions necessary to meet initial expenses
42 of the pool. The board shall make this determination
43 based on the data provided in the plan of operation.

1 Revised Law

2 Sec. 2209.254. DEPOSITORY BANK. (a) The board may select
3 one or more banks to serve as a depository for money in the fund.

4 (b) A depository bank must execute a bond or provide other
5 security before the pool manager may deposit fund money in the bank
6 in an amount that exceeds the maximum amount secured by the Federal
7 Deposit Insurance Corporation. The bond or other security must be
8 in an amount sufficient to secure the excess amount of the deposit.
9 (V.T.I.C. Art. 21.49-14, Sec. 12(f).)

10 Source Law

11 (f) The board may select one or more banks to
12 serve as depository for money of the fund. Before the
13 pool manager deposits fund money in a depository bank
14 in an amount that exceeds the maximum amount secured by
15 the Federal Deposit Insurance Corporation, the bank
16 must execute a bond or provide other security in an
17 amount sufficient to secure from loss the fund money
18 that exceeds the amount secured by the Federal Deposit
19 Insurance Corporation.

20 [Sections 2209.255-2209.300 reserved for expansion]

21 SUBCHAPTER G. POOL COVERAGE

22 Revised Law

23 Sec. 2209.301. SCOPE OF COVERAGE. (a) The pool shall
24 insure a nonprofit organization and the organization's officers and
25 employees against liability for acts and omissions under the laws
26 of this state.

27 (b) The pool shall provide to a nonprofit organization that
28 qualifies under this chapter and the plan of operation:

29 (1) primary liability insurance coverage in an amount
30 not to exceed \$250,000; and

31 (2) excess liability insurance coverage in an amount
32 that the board finds is actuarially sound.

33 (c) The pool may participate in evaluating, settling, and
34 defending a claim against a nonprofit organization insured by the
35 pool if the claim is covered by pool coverage.

36 (d) The pool is liable in an amount not to exceed the limit
37 of coverage provided to a nonprofit organization on a claim made
38 against the organization. (V.T.I.C. Art. 21.49-14, Sec. 3.)

1 Revised Law

2 Sec. 2209.306. NONRENEWAL OF COVERAGE. (a) Except as
3 provided by Subsection (b), the pool may refuse to renew the
4 coverage of a nonprofit organization that fails to comply with the
5 pool's underwriting standards.

6 (b) The pool may not refuse to renew the coverage of a
7 nonprofit organization during the first 24 calendar months
8 following the month in which the nonprofit organization is first
9 provided coverage by the pool if the organization maintains the
10 underwriting standards established by the plan of operation.
11 (V.T.I.C. Art. 21.49-14, Secs. 19(a), (b).)

12 Source Law

13 Sec. 19. (a) Except as provided by Subsection
14 (b) of this section, the pool may refuse to renew the
15 coverage of any nonprofit organization that fails to
16 comply with the pool's underwriting standards.

17 (b) The pool may not refuse to renew the
18 coverage of a nonprofit organization for the first 24
19 calendar months following the month in which the
20 nonprofit organization was first insured by the pool;
21 provided that the pool participant maintains
22 underwriting standards established by the plan of
23 operation.

24 Revisor's Note

25 Section 19(b), V.T.I.C. Article 21.49-14,
26 prohibits the Texas Nonprofit Organizations Liability
27 Pool from refusing to renew the coverage of a nonprofit
28 organization for a certain period if the "pool
29 participant" meets certain standards. For
30 consistency, the revised law substitutes "nonprofit
31 organization" for the quoted language.

32 Revised Law

33 Sec. 2209.307. SUBSEQUENT COVERAGE. (a) A nonprofit
34 organization that voluntarily discontinues coverage provided by
35 the pool may not subsequently obtain coverage from the pool for at
36 least 12 calendar months following the month in which the
37 organization discontinues the coverage.

38 (b) A nonprofit organization whose coverage is not renewed
39 under Section 2209.306 is not eligible to subsequently apply for

1 coverage during the 12 calendar months following the month in which
2 the pool gives written notice of nonrenewal. (V.T.I.C. Art.
3 21.49-14, Secs. 16(b), 19(c) (part).)

4 Source Law

5 [Sec. 16]

6 (b) A nonprofit organization that voluntarily
7 discontinues coverage in the pool may not again obtain
8 coverage from the pool for at least 12 calendar months
9 following the month in which the coverage was
10 discontinued.

11 [Sec. 19]

12 (c) . . . A nonprofit organization whose
13 coverage is not renewed is not eligible to apply for
14 new coverage during the 12 calendar months beginning
15 after the month in which the pool gave written notice
16 that it would not renew the coverage.

17 Revisor's Note

18 Section 19(c), V.T.I.C. Article 21.49-14,
19 provides that Section 16(b) of that article does not
20 apply if the Texas Nonprofit Organizations Liability
21 Pool refuses to renew a nonprofit organization's
22 coverage and provides procedures for obtaining
23 coverage subsequent to a refusal to renew. Section
24 16(b), according to its terms, prohibits a nonprofit
25 organization from obtaining subsequent coverage for a
26 specified period if the organization voluntarily
27 discontinued previous pool coverage. Because the
28 pool's refusal to renew coverage under Section 19(c) is
29 not a voluntary discontinuance of coverage by a
30 nonprofit organization, Section 16(b) would not apply
31 by its terms. Therefore, the revised law omits as
32 unnecessary the statement in Section 19(c) that
33 Section 16(b) does not apply if the pool refuses to
34 renew coverage. The omitted law reads:

35 (c) Subsection (b) of Section 16 of
36 this article does not apply to
37 discontinuance of a nonprofit
38 organization's coverage if the pool refuses
39 renewal under this section. . . .

40 Revised Law

41 Sec. 2209.308. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If

1 money in the fund would be exhausted by the payment of all final and
2 settled claims and final judgments during a fiscal year, the pool
3 shall prorate the amount paid to each person having the claim or
4 judgment.

5 (b) If the amount paid by the pool is prorated under this
6 section, each person described by Subsection (a) shall receive an
7 amount equal to the percentage that the amount owed to that person
8 by the pool bears to the total amount owed, outstanding, and payable
9 by the pool.

10 (c) The pool shall pay in the next fiscal year the remaining
11 amount that is due and unpaid to a person who receives a prorated
12 payment under this section. (V.T.I.C. Art. 21.49-14, Sec. 20.)

13 Source Law

14 Sec. 20. (a) If money in the fund will be
15 exhausted by payment of all final and settled claims
16 and final judgments during the fiscal year, the amount
17 paid by the pool to each person having a claim or
18 judgment shall be prorated, with each person receiving
19 an amount that is equal to the percentage the amount
20 owed to that person by the pool bears to the total
21 amount owed, outstanding, and payable by the pool.
22 (b) The remaining amount that is due and unpaid
23 to a person who receives prorated payment under
24 Subsection (a) of this section must be paid in the
25 immediately following fiscal year.

26 CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION

27 SUBCHAPTER A. GENERAL PROVISIONS

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39 [Sections 2210.009-2210.050 reserved for expansion]